Cited as "1 ERA Para. 70,110"

Columbia LNG Corporation, Consolidated System LNG Company, Southern Energy Company (ERA Dkt. No. 79-14-LNG), December 29, 1979.

Opinion and Order Approving the Joint Application of Columbia LNG, Et Al. for Amendments to Previous Orders Authorizing Importation of LNG into the United State from Algeria, and for Amendments to Certain Related Contractual Provisions.

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I. Introduction

On May 18, 1979, Columbia LNG Corporation (Columbia LNG), Consolidated System LNG Company (Consolidated LNG), and Southern Energy Company (Southern Energy)--collectively the applicants--filed a joint application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), requesting that ERA (1) amend previous orders authorizing importation of liquefied natural gas (LNG) from Algeria; and (2) approve amendments to contracts associated with such imports and approve new import prices for the LBNG consistent with the amendments. The application was filed with ERA pursuant to Section 3 of the Natural Gas Act, Sections 301 and 402(f) of the DOE Organization Act, and DOE Delegation Orders Nos. 0204-4 and 0204-25.

A. Background

1. Events Prior to the Application in This Docket

In 1972, the Federal Power Commission (FPC, or Commission), in Opinion Nos. 622 and 622A, authorized the applicants to import into the United States the LNG equivalent of approximately one billion cubic feet (1 Bcf) of natural gas per day (the "El Paso I" LNG project).1/ Consolidated LNG and Columbia LNG were authorized to import the equivalent of approximately 350,000 Mcf and 300,000 Mcf of natural gas per day respectively at Cove Point, Maryland; and Southern Energy was authorized to import the equivalent of approximately 350,000 Mcf of natural gas per day at Elba Island, Georgia.

Pursuant to the authorizations set forth above, El Paso Algeria Corporation (El Paso Algeria) would purchase the LNG from Societe Nationale pour la Recherche, la Production, le Transport, la Transformation et la Commercialisation des Hydrocarbures (Sonatrach), the Algerian national oil and gas company, pursuant to an agreement dated October 9, 1969, as amended in 1971 (the Initial Agreement). El Paso Algeria would then transport the LNG to Cove Point or Elba Island and sell it to the applicants at those points.

The Initial Agreement provided for the sale of the LNG f.o.b. Arzew, Algeria, over a 25-year term at a price of $0.305 per million Btu's (MMBtu) subject to certain escalation provisions. El Paso Algeria would then deliver the LNG in a fleet of cryogenic tankers to the applicants' terminals pursuant to LNG sales agreements between each applicant and El Paso Algeria.

In Opinion No. 622-A, the Commission stipulated a maximum price--the import ceiling price--which each applicant could pay to El Paso Algeria. The price was based on the initial f.o.b. price of $0.305 per MMBtu plus estimated costs per MMBtu for investment in the facilities, including the tankers, operating expenses and the cost of debt for the project. For Columbia LNG and Consolidated LNG, the import ceiling price was set at $0.77 per MMBtu, and for Southern Energy, at $0.83 per MMBtu. In its order of July 27, 1977, the Commission authorized an increase in the import ceiling price to $1.25 per MMBtu for Columbia LNG and Consolidated LNG and to $1.31 per MMBtu for Southern Energy. The authorization was based on anticipated increases in the costs of transporting the LNG from Algeria to the United States during the first year of full operations. (The twenty-five year term of the Sonatrach Agreement began when deliveries of LNG actually commenced in March 1978.) On May 8, 1979, ERA conditionally authorized a further increase in the import ceiling price to $1.46 per MMBtu for Columbia LNG and Consolidated LNG, and to $1.56 per MMBtu for Southern Energy. This conditional authorization was based on further estimated transportation (shipping) cost increases to Cove Point, Maryland, and Elba Island, Georgia.

The Initial Agreement provided for escalation of 20 percent of the f.o.b. price based on a formula utilizing two Bureau of Labor Statistics indices that did not reflect costs of fuel oil.2/ In their application of May 18, 1979, the applicants asserted that while the operation of the escalator had raised the f.o.b. price from the $0.305 per MMBtu approved by the Commission in 1972 to $0.37 per MMBtu as of May 1979, Sonatrach's capital and operating costs had increased at a much higher rate than the f.o.b. price, Sonatrach was sustaining a negative cash flow from the project, and immediate price relief was required if Sonatrach was to continue to provide LNG for the project. The applicants further asserted that, at the request of Sonatrach, El Paso Algeria and Sonatrach had entered into an Amendment Agreement (Amendment), dated May 11, 1979, which would modify the Initial Agreement to provide an interim increase in the f.o.b. price from July 1, 1979, through December 31, 1979--the Interim Price--and establish new pricing formulae and provisions to be effective January 1, 1980.

The Interim Price was to be effective July 1, 1979--retroactively, if necessary--with payment to commence after appropriate U.S. regulatory approval, but in any event no later than September 1, 1979. Revenues due but not paid between the effective date (July 1, 1979) and the approval date would be deferred and recovered (with interest at 11.5 percent per annum) by spreading the total amount due equally over a period required to deliver twice the volume delivered between July 1, 1979 and the date of approval.

The Interim Price was $1.75 per MMBtu reduced by a "discount" of $0.60 per MMBtu, resulting in an f.o.b. price of $1.15 to be effective from July 1, 1979, through December 31, 1979. The Amendment further provided that, on January 1, 1980, and on each July 1 and January 1 thereafter, the base price of $1.75 would be adjusted to reflect changes in the price of "competing fuel oils" as determined by a formula described elsewhere in this Opinion.3/

The Amendment contained provisions to the effect that, whenever either of the fuel oil indices used in the escalator formula ceased to reflect changes in the market prices on the East Coast of the U.S. for fuel oils of the same characteristics, the parties would meet to select new indices to reflect more accurately such market prices.

> ". . . Such meeting shall be held upon reasonable notice given by one of the parties to the other, in writing, accompanied by data showing the necessity for such meeting.
>
> "The parties believe that the overall economic result of [the amendment] should produce, during the period July 1, 1979 through June 30, 1983, a cost after regasification no higher than the cost of imported competing fuels on the East Coast of the United States. If the parties agree, prior to the first four year review of the price (as provided in Section 4 hereof) that this is not the case, for any reason, they will promptly meet to consider measures to be taken.%' 4/

Section 4 of the Amendment provided, inter alia, for meetings between the parties during the first quarter of 1982 and every four years thereafter for the purpose of reviewing the provisions relating to the contractual sales price. Such review would consist of adapting the contractual sales price, in a fair and reasonable manner, to the market conditions existing at that time for natural gas imported under long-term agreements and for other forms of energy competing with the LNG imported into the East Coast of the United States.5/

Finally, the Amendment provided that the prices established by the Amendment would become effective when all necessary authorizations from appropriate Algerian and U.S. regulatory authorities had been secured; that the Amendment was subject to cancellation by either party if the Interim Price had not become effective by August 31, 1979, on a firm basis; and that the Amendment could be terminated by either party if final and nonappealable regulatory approval of all of the pricing provisions had not been secured by December 31, 1979.

2. Events Subsequent to the Application in This Docket

On June 13, 1979, we issued a notice of the May 18, 1979 application in this docket and invited petitions to intervene.6/ Numerous petitions for intervention were received, many of them expressing support for the application. One petitioner (the Attorney General of the State of Ohio) requested a hearing, but explicitly stated that the request was limited to aspects of the Amendment other than the proposed Interim Price.

On August 22, 1979, we issued an "Opinion and Order Approving in Part an Application for Amendments to Import Authorization and for Interim Relief, and Granting Intervention." 7/

Opinion No. 7 constituted a final order, subject to Section 19 of the Natural Gas Act, with respect to the Interim Price only. It approved the Interim Price, as requested by the applicants, for the period July 1, 1979 through December 31, 1979, and granted intervention to all petitioners, including those who filed late.

Opinion No. 7 compared the estimated landed and regasified price of El Paso I LNG, as adjusted for the requested Interim Price of $1.15 f.o.b. Arzew, Algeria, with prices of residual fuel oil as reported in Platt's Oilgram and DOE's Weekly Petroleum Status report, and determined that the Interim Price would result in a regasified price for the LNG that was lower than that for residual fuel oil. We found, therefore, for these and other reasons fully stated in Opinion No. 7, that approval of the Interim Price was in the public interest. However, with regard to other aspects of the Amendment affecting pricing and other provisions for the period after December 31, 1979, Opinion No. 7 stated our belief that further examination was required prior to reaching a decision. Accordingly, we announced in that opinion our intention to hold a prehearing conference to explore and delineate procedures which might be appropriate to identify and resolve the range of issues which the parties believed might be appropriate for hearing and decision. The prehearing conference was to cover the following issues, as well as such others that might be found to be relevant:

1. Is the Amendment's proposed automatic price escalator based on changes in fuel oil prices consistent with the public interest? To the extent, if any, that such provisions are approved as a matter of policy, are the specific Platt's Oilgram indices used in the Amendment's pricing formula appropriate reference points?

2. Are the scheduled price increases provided for in the Amendment consistent with the public interest?

3. What is the proper mechanism, if any, by which DOE or third parties could conduct or initiate a price review on their own initiative? Should periodic price increases or automatic escalations, if any are approved, be subject to a showing that they do not exceed prices of competing fuels?

Opinion No. 7 also stated that the prehearing conference, scheduled for September 14, 1979, in Washington, D.C., would specifically consider whether there was a need for an evidentiary hearing to resolve the issues.

On September 4, 1979, the Administrator of ERA delegated to the Deputy Administrator for Policy authority to hear and decide all issues in this proceeding.8/

On September 14, 1979, pursuant to the schedule established in Opinion No. 7, we held a prehearing conference in Washington, D.C., to determine whether there were any factual issues in dispute which would require an evidentiary hearing and, if so, what procedures should be adopted for the hearing.

On September 24, 1979, we issued a Prehearing Order which stated, inter alia, that after a careful review of the statements presented at the prehearing conference the petitions for intervention in this proceeding, and all other documents submitted by the parties, we had determined that it was necessary and appropriate to hold an evidentiary hearing. While we expressed our intention to review this application as expeditiously as possible so as to permit a final decision by December 31, 1979, we also stated our belief that procedural due process required that an evidentiary hearing be held.

The Prehearing Order established procedures and schedules for the development and submission of prepared direct and rebuttal testimony and exhibits; scheduled a discovery conference to be held in Washington, D.C., on October 9, 1979; and established October 30, 1979, as the date on which an evidentiary hearing would commence.9/

The Prehearing Order also set forth the following issues of fact as appropriate for submission of evidence at the forthcoming hearing:

1. Is the proposed LNG price reasonable, particularly in light of prices of alternate energy supplies, including domestic and other proximate sources of natural gas?

a. Are reasonably-priced alternate supplies available in sufficient quantities to replace this gas supply?

b. Are the alternate energy supplies available in the appropriate time period?

c. What would be the effects of disapproval of the contract amendment on the applicants, their supplier and customers, and the end-users of this gas supply?

2. Is the proposed escalator reasonable?

a. Is the use of Platt's Oilgram price indices reasonable?

b. Does the formula based on increases in the price of No. 2 and No. 6 low sulfur fuel oil in New York Harbor accurately reflect the cost of alternative energy sources in the areas served by the applicants (if that is a contention upon which the applicants rely)?

3. Is there a reasonable basis for amending the contract (assuming, as the applicants asserted at the prehearing conference, that the original contract is binding on the supplier at the current price)?

a. If the applicants are relying on the supplier's increased costs as a basis for amending the contract, what are those increased costs and what relationship do they have to the proposed price increase?

b. Are there factors other than increased costs to the supplier which warrant an increased price?

c. What benefits will the public derive from approval of the amended contract?

4. What will be the impact of the price proposed by the applicants on U.S. balance of payments?

The Prehearing Order placed the burden of proof on the applicants with respect to the above issues to demonstrate that approval of the application would be consistent with the public interest. In addition, for reasons fully detailed in the Prehearing Order, we stated that it would be appropriate for any party to advocate incremental pricing of the LNG and to submit evidence in support of that position. On this fifth issue, however, we stated that the burden would rest with those advocating incremental pricing to demonstrate that such pricing was practicable and in the public interest. Any party advocating incremental pricing was advised in the Prehearing Order to address at least the following two factual issues:

1. Would this gas clear the market if it were incrementally priced?

2. What would be the effect of incremental pricing on end-users?

Subsequent to issuance of the Prehearing Order, several parties filed motions to modify the Order. Most of the modifications requested were of a procedural nature and had either been overtaken by events or were found to be without merit, and were denied in an "Order Modifying Prehearing Order" issued on October 18, 1979. The October 18 Order did grant the request of one party for an adjustment in the scheduling of proposed stipulations, however, and more significantly, amended the Prehearing Order to require the applicants to demonstrate either that the distribution companies served by the El Paso I project would purchase the gas directly from the applicants or that the evidence in this case rebutted the usual presumption in favor of direct sales contracts for imported LNG. In connection with this ruling, we reiterated in the Order the statement made at the discovery conference held on October 9, 1979,10/ that the applicants would have the burden of conducting a survey of the distribution companies served by this project to determine whether they were willing to enter into direct sales contracts.

Pursuant to the procedures and schedules established in ERA's Prehearing Order of September 24, 1979 (as modified by the Order Modifying Prehearing Order of October 18, 1979), an evidentiary hearing was held in this docket in Washington, D.C., commencing on October 30, 1979. The hearing took nine days, concluding on November 9, 1979.

Subsequent to the hearing, initial and reply briefs were filed by the parties. Because the briefs fully covered all issues and because the ultimate decision maker had also presided at the hearing and was therefore personally familiar with the record and the contentions of the parties, a notice was issued on November 30, 1979, to the effect that no oral argument was necessary. The record in this proceeding and all briefs filed by the parties have been fully considered in this Opinion and Order.

II. Authorities

Pursuant to section 301 and section 402(f) of the Department of Energy Organization Act, jurisdiction over the imports and exports of natural gas, including liquefied natural gas, is vested in the Secretary of Energy. The Secretary has delegated to the Administrator of the Economic Regulatory Administration, in Delegation Order No. 0204-4,11/ authority to regulate the "exportation and importation of natural gas pursuant to the provisions of section 3 of the Natural Gas Act. . . ."

Section 3 of the Natural Gas Act provides that no person shall import natural gas into the United States from a foreign country without first having secured an order from the Department of Energy authorizing it to do so.

Section 3 directs DOE to:

> ". . . issue such order upon application, unless, after opportunity for hearing, it finds that the proposed . . . importation will not be consistent with the public interest."

Under a subsequent delegation, DOE Delegation Order No. 0204-54,12/ the Administrator is delegated the authority to determine whether a proposed import or export of natural gas is not inconsistent with the public interest within the meaning of section 3 of the Natural Gas Act, based on certain considerations which may include (1) the security of gas supply, (2) the effect on the U.S. balance of payments, (3) the price proposed to `e charged at the point of importation or exportation, (4) national and regional needs for the natural gas to be imported or exported and, (5) in the case of imported natural gas, the eligibility and respective shares of purchasers and participants. In addition, the Administrator is authorized to determine whether the proposed import or export is consistent with the DOE's regulations or statements of policy specifically applicable to natural gas imports and exports.

As noted above, the Administrator's authority under Delegation Order No. 0204-54, insofar as it applies to this and other proceedings, was further delegated to the Deputy Administrator for Policy pursuant to a delegation order issued September 4, 1979. It was pursuant to this delegation order that the Deputy Administrator for Policy presided over the Prehearing and Discovery Conferences, presided over the evidentiary hearing, and issued various procedural orders. On December 1, 1979 the Deputy Administrator for Policy became the Acting Administrator of ERA.

III. Summary of the Decision

This case has presented the ERA with issues that are of major significance both in terms of short term energy supply and longer term energy policy. The supplies at issue--about one billion cubic feet per day, or the equivalent of 200,000 barrels of oil a day--when the project is operating at full capacity constitute a major source of natural gas for the eastern and southern portions of the United States. This is by far the largest existing project for the importation of natural gas from any country other than Canada. The price at which this gas supply has been obtained in the past has been highly advantageous to U.S. consumers, since it was negotiated before the enormous increases in energy prices that have occurred over the last seven years, and it was largely insulated from such increases by being tied to inflation indices that did not reflect energy prices.

What is at issue here is whether we should approve an amendment to the LNG purchase contract in which the price would be increased five-fold from pre-July 1, 1979 levels and would for the remaining 23-year period of the contract tie the price of the LNG to the prices for imported petroleum fuels.

After hearing nine days of oral testimony and reviewing the extensive pleadings filed by the parties to this proceeding, we have decided that the Amendment Agreement at issue here is not inconsistent with the public interest within the meaning of Section 3 of the Natural Gas Act and should therefore be approved in all respects.

This approval does not mean that we look with favor on all features of the Amendment Agreement, for we do not. However, we believe the Amendment must be viewed as a whole, and while we would have preferred that some provisions be written differently, we believe the Amendment on balance is reasonable.

Viewed in its entirety, the Amendment Agreement provides for a price after regasification that is competitive with the most readily available alternative fuel, residual fuel oil, and is somewhat cheaper than any other current or future natural gas imports, including those by pipeline from Canada and Mexico. As of January 1, 1980, it provides for a f.o.b. price that is $0.73 per MMBtu cheaper than the prices for other LNG imports from Algeria. While that advantage will shrink rapidly between now and 1983 as the discounts are phased out, it will still provide a significant price advantage over other Algerian gas imports in 1983 and over the remaining life of the contract.

We do have some concern particularly about some of the features of the escalation clause, as we will describe in detail below. However, we believe the Amendment itself provides a means by which any unintended distortions caused by these troublesome features of the escalation clause can be corrected, and we believe it is not in the public interest to risk this important gas supply by disapproving these features and requiring the contract to be renegotiated.

While we approve the Amendment Agreement in its entirety, we condition that approval on the requirement that this LNG supply be incrementally priced to certain end-users in accordance with the provisions of Title II of the Natural Gas Policy Act of 1978 and the Federal Energy Regulatory Commission rules implementing that Title. Because of the substantial increase in the price of this gas occasioned by the Amendment Agreement, we find that continuing to roll in the price of this gas with other pipeline supplies would result in the subsidization of this LNG import at the expense of more secure sources of domestic natural gas and would tend to delay the conversion of industrial users of natural gas to coal and other domestic alternative fuels, contrary to the long-term energy interests of the Nation.

The considerations that led us to these conclusions are discussed in detail in the sections of this opinion that follow.

IV. Discussion of the Issues

A. Whether Amending the Initial Contract Is in the Public Interest

The threshold issue that must be decided in this proceeding is whether it is not inconsistent with the public interest, within the meaning of Section 3 of the Natural Gas Act, to allow the applicants and El Paso Algeria to replace the Initial Sonatrach Agreement of October 9, 1969, as amended in 1971, with the Amendment Agreement at issue here. None of the parties to this proceeding has asserted that Sonatrach is, under the terms of that Initial Agreement, excused from delivering gas under the agreement for the life of the contract, although all parties also agree that it would be financially detrimental, if not disastrous, for Sonatrach to do so. The initial brief of the interveners Consumer Federation of America and Consumer Energy Council of America (CFA/CECA) is devoted almost entirely to the argument that the Initial Agreement is binding on Sonatrach, which should be held to this contract, even if it is no longer profitable.

CFA/CECA argues for the sanctity of the existing contract, contending that Sonatrach had freely entered into an agreement in 1969 with the applicants to supply a specified volume of LNG for a specified price. They argue that even though the initial price causes Sonatrach to incur substantial losses, such considerations have no bearing on its contractual obligations. Citing the decision in Gulf Oil Corp. v. FPC 563 F.2d 588 (3d Cir.), cert. denied, 434 U.S. 1062 (1977) they state that:

> "the Commission [Federal Power Commission] and the courts have already expressly held that a domestic supplier in a situation virtually identical to Sonatrach's--i.e., selling significant volumes of gas under a long-term contract at a fixed price well below market levels--is bound by its contract terms." 13/

There is clear and uncontroverted evidence in the record here that the actual cost of construction of the liquefaction facilities at Arzew, as well as the operating expenses incurred by Sonatrach since start-up of the project, have greatly exceeded estimates made at the time the Initial Agreement was signed in 1969. Whereas Sonatrach's initial construction cost estimates for the project were about $540 million in 1969, they have actually reached over $2.25 billion.14/ Similarly, annual operating expenses, which were estimated to be on the order of $20 million per year in 1969, are now approximately $145 million per year, which is roughly the current revenue that would be received by Sonatrach if the Initial Agreement were still in effect.

The drastic increase in costs can be ascribed to a variety of factors, including the substantial and persistent inflation throughout the world affecting costs of labor and equipment and the declining value of the dollar. The Sonatrach witness ascribed a portion of the cost increases also to delays resulting from the U.S. regulatory process and to delays that ensued when the firm awarded the contract to construct the liquefaction plant allegedly did not fulfill its commitment and another firm had to be retained in mid-project to complete the facility.

Hence, while the record does not contain precise evidence as to the dollar amounts involved, it is clear and uncontroverted that continuation of deliveries under the Initial Agreement would result in a substantial economic loss to Sonatrach. Furthermore, because actual operating expenses can be expected to continue to rise, limiting recovery to the 37.5 cents per MMBtu price subject only to partial escalation would prove even less satisfactory economically to Sonatrach in the future.

We agree with the applicants, therefore, that the project is no longer commercially sustainable from the standpoint of Sonatrach unless there is immediate price relief. The more difficult question is whether we should nevertheless hold Sonatrach to what turned out to be a "bad deal" for it but an extremely favorable one for U.S. consumers.

CDA/CECA argue that we should, citing as precedent Gulf Oil Corp. v. FPC, supra. In that case, Gulf had sought to abrogate a contract in which it had agreed to sell to Texas Eastern specified quantities of gas at a fixed price for 26 years. No specific leases or reserves were dedicated to the performance of the contract, although Gulf intended to produce most of the gas from a field where it believed it had 2.7 trillion cubic feet of gas available for sale to Texas Eastern. A latter reserve determination, however, disclosed that Gulf had made an error in originally estimating its available reserves, and that the volumes actually available were only 40 percent of the original estimate. In order to fulfill the contract, therefore, Gulf had to provide higher cost gas, and it renegotiated its sales contract with Texas Eastern in order that it could recover its costs of these additional supplies.

The FPC rejected Gulf's efforts to amend the contract and its certificate of public convenience and necessity (Opinion No. 692, April 19, 3974) and the decision was affirmed by the Third Circuit. The FPC and the court pointed out that Gulf not only agreed to sell gas unrelated to specific reserves, but also warranted the availability of sufficient quantities of gas at the negotiated price. The court concluded that:

> "[b]y warranting, rather that merely promising, the availability of sufficient quantities of gas, Gulf assumed for itself the entire risk that future conditions would raise the cost of gas." 15/

Further, the court noted that:

> "the existence of a warranty as to the availability of gas completely forecloses equitable relief based on a mistake as to the availability of gas." 16/

Moreover, the court pointed out that, in continuing to perform under the original contract, Gulf was not likely to suffer a loss, but merely would realize smaller profits than originally anticipated.17/

We read the Gulf decision as essentially reaching two results. First, it found that under the terms of the contract at issue there Gulf was not excused from performance because its gas reserves were not as great as it thought they were, since it had warranted in the agreement that it could supply the volumes contracted for. Second, it held that it was not in the public interest in the circumstances of that case to allow the parties to renegotiate the contract notwithstanding Gulf's obligation to perform. Critical to this latter determinations the finding that Gulf could perform the contract without incurring significant financial losses.

In this case, as noted, no party argues strenuously that Sonatrach foes not have an obligation to perform under the Initial Agreement. Sonatrach agreed to a specified price with no qualifications. The fact that it did not take into account subsequent cost increases does not in our judgment excuse performance, since cost over-runs are always a substantial possibility in projects such as this. As a matter of contractual obligation, therefore, we reach the same conclusion that the FPC and the court did in Gulf.18/

We do not, however, reach the same conclusion as Gulf with regard to the issue of whether, in any event, a renegotiated contract that better reflects costs incurred by Sonatrach is in the public interest. We believe that it is. There is no question from this record that Sonatrach will continue to absorb substantial losses if it continues to perform under the Initial Agreement. This project would in effect have to be subsidized by other oil and gas projects of Sonatrach, many of which benefit the U.S. Given Sonatrach's ties to the Algerian government and the responsibility of what government to protect Algeria's natural resources for the benefit of all its citizens, it would be unrealistic for us to expect the Sonatrach would long continue perform under this contract, even though it may have a legal obligation to do so. The probable result of our insisting on performance of the Initial Contract would be the cessation of gas deliveries under the contract and a protracted effort, with an uncertain result, by the applicants through international arbitration to attempt to recover damages as a result of the loss of this gas supply. We do not believe the U.S. consumer would be well served by such a penny wise but pound foolish approach to this Amendment Agreement.

Therefore, we find that in the circumstances of this case it is not inconsistent with the public interest for the parties to have negotiated a replacement for the Initial Agreement. We base that conclusion primarily on the determination that the initial contract price for this important supply of natural gas (about which more will be said in Section D below) is so out of line with Sonatrach's costs that it would be unreason/able to expect continued deliveries by Sonatrach. We emphasize that the consumer as well as the supplier must be concerned with the latter's economic viability when the difference between revenues and costs is as great as it is here. Our decision here should not be read as suggesting that we will be receptive to renegotiations of supply contracts merely because the supplier has incurred greater costs than it anticipated if the disparity does not strike to the very heart of the project, as it does here.

B. Whether the Price Provisions of the Amendment Agreement Are in the Public Interest

While we agree that it is not inconsistent with the public interest to allow a renegotiation of the price in the Initial Agreement, we must scrutinize the renegotiated price carefully to determine whether it reflects a fair price to the U.S. consumer, particularly in light of what has been sacrificed in the renegotiation.

1. The Initial f.o.b. Sales Price

a. Summary of the Evidence

The sales price at issue here is $1.75 per MMBtu base price, plus escalation (according to a formula that will be discussed in subsection 2 below) and minus certain "discounts" according to the following schedule:

Period		
Beginning	Ending	Amount
7/1/79	12/31/79	$0.60
1/1/80	6/30/80	0.50
7/1/80	12/31/80	0.40
1/1/81	6/30/81	0.30
7/1/81	12/31/81	0.20
1/1/82	6/30/82	0.10
7/1/82	12/31/82	0.10
1/1/83	6/30/83	0.10

After June 30, 1983, no "discount" is applicable. As of January 1, 1980, the initial f.o.b. sales price, as escalated and discounted pursuant to the contract price adjustment formula, is $1.94 per MMBtu.

The testimony in this proceeding indicates that while the parties' original intent in reopening the Initial Agreement was to stem Sonatrach's financial losses, the price they arrived at was designed not just to cover Sonatrach's costs but to reflect the current commodity value of this LNG on the world market, adjusted for certain other considerations unique to this case. Thus, in the negotiations on the base price there was considerable comparison by the parties with the base prices in the existing contracts Sonatrach has with Distrigas Corporation for LNG that is being imported into Everett, Massachusetts and with Trunkline for LNE that will be imported, beginning in late 1980, into Lake Charles, Louisiana.19/ The $1.75 base price finally agreed on, to be effective July 1, 1979, was, $0.15 per MMBtu less than the $1.90 sales price on July 1, 1979 for LNG sold to Distrigas and Trunkline. Since the escalator clauses in all these contracts are similar, the base price in this case will continue to enjoy the same advantage, on a proportional basis, over the base prices in the Distrigas and Trunkline projects even after the discounts have expired in June 1983.

El Paso Algeria's witness testified that the discounts agreed to by the parties to the Amendment Agreement represent the value placed by the parties on the "antiquities" of the Initial Agreement. Stated differently, they represent the consideration received by El Paso for releasing Sonatrach from its obligation to perform under the Initial Agreement. The advantage represented by the discounts is temporary, however, because they phase out entirely by June 1983. The additional $0.15 advantage, as of July 1,. 1979, is permanent, in that it will remain for the life of the contract.

There remains some dispute over the $0.15 price differential. Since the Amendment Agreement was signed and became effective, Sonatrach has informed El Paso Algeria that it did not intend the $0.15 per MMBtu differential to have resulted from the negotiations.20/ El Paso Algeria has made it clear to Sonatrach and we believe it to be true that the $1.75 base price was a negotiated price and that it was arrived at in full recognition that it was different from the base prices in Distrigas and Trunkline.21/

In making a determination of the reasonableness of the price agreed to in the Amendment Agreement, it is necessary to compare it with the prices of alternative fuels. The LNG price that will be used for this comparison is the price that will be in effect on January 1, 1980.

We have calculated the amount of escalation based on actual Platt's Oilgram price data through November 30 and find that the January 1, 1980 through June 30, 1980 price will be $1.9448 per MMBtu.22/ Record evidence indicates that costs related to ship transportation, boil-off, fuel and regasification would result in a total price of $3.43 per MMBtu for the regasified LNG at the tailgate of the LNG terminal.23/

b. Contentions of the Parties

The applicants argue that the LNG from this project is competitive both with No. 2 fuel oil and with residual (No. 6) fuel oil. Further, the applicants have submitted evidence that regasified LNG at the tailgate will remain competitive for the foreseeable future with even the least expensive high-sulfur residual fuel oil delivered to New York Harbor.24/ People's Counsel of Maryland (PCM) does not directly challenge this testimony, but urges disapproval of the requested LNG price on the ground that the applicants have failed to demonstrate that costs are competitive at the burner-tip. PCM asserts that Opinion No. 7 (which approved the Interim Price in this case) required such a showing.

The evidence in the record on the price this LNG would have at the burner-tip if its cost were dully and directly flowed through is such as to not allow precise comparisons, since there is enormous disparity at different locations in the transportation costs that local distribution companies are allowed to charge various types of customers. However, the applicants have offered evidence to the effect that no new facilities were constructed by their affiliated interstate pipeline companies or by local distribution companies in order to accept and transmit the regasified LNG and that, using the Columbia System as an example, less than three percent of the gas purchased by the pipeline customers is attributable to compressor fuel, line loss or "unaccounted for." 25/ The applicants therefore apply the 3 percent factor to compressor fuel expenses for the entire Columbia system plus 2 percent average estimated loss at the city gate to obtain the average incremental cost of service attributable to the LNG alone and arrive at an estimated burner-tip price of $3.63 per MMBtu.26/ Using this procedure, the applicants conclude that imported Algerian LNG remains competitive with both No. 2 and No. 6 fuel oils at the burner-tip.

The applicants also argue, however, that even though the price of imported LNG is competitive with the cost of residual fuel oil at comparable levels of distribution, No. 2 fuel oil and not No. 6 is actually the primary alternate fuel in their service areas. Columbia, for example, notes that in our approval of the importation of Indonesian LNG in Opinion No. 8, we did not consider No. 6 fuel oil as a viable alternative to LNG for the California market there in question. Columbia asserts:

> "By the same token, the evidence in this record shows that No. 6 fuel oil is not a major competing alternative fuel so far as the Applicants' markets are concerned." 27/

The applicants also maintain that the imported LNG, under the pricing provisions of the Amendment Agreement, would compare favorably with other natural gas imports and with prevailing world LNG contract prices. Southern, for example, argues that the price of LNG from this project is lower than the price Trunkline would be paying if that project were operational today, and below the price that Distrigas is now paying for its LNG from Algeria; is far lower than the projected cost of Alaskan gas when it becomes available (at least $7.20 per MMBtu); and is less expensive then either Mexican or Canadian gas. While the border price for Canadian gas is currently $3.45 per MMBtu, Southern notes that the border price for Mexican natural gas under the import proposal (which is today being approved by ERA) 28/ would be $3.625 per MMBtu on January 1, 1980:

> "Moreover, the regasified [El Paso I] LNG is delivered directly to Southern's pipeline whereas the Canadian and Mexican prices are before transmission from the border to the pipeline. When those costs are added the imported LNG regasified at Savannah is at a lower cost than either Canadian or Mexican gas as of January 1, 1980." 29/

El Paso states that Algerian gas is being marketed in Europe at substantially higher prices than the Amendment Agreement calls for (approximately $2.25 per MMBtu during the second semester of 1979). It further asserts that the discount schedule provided for in the Amendment Agreement makes the base price even more attractive, and that the discounts will in fact account for almost $500 million in savings to U.S. consumers.30/

The Public Service Commission of the State of New York (PSCNY) takes the position that even if the cost of the regasified LNG will be more expensive than the applicants' average cost of purchased gas at the outset, the proposed price could result in lower costs than other potential sources of natural gas in the future. Moreover, PSCNY states that the incremental cost of the LNG to industrial users is less than that of No. 2 and low-sulfur residual fuel oils, which are the predominant alternative fuels in New York State.31/

CFA/CECA oppose approval of the base price, stating simply that the additional costs generated by the Amendment Agreement will be borne by the consumers and not by the companies importing the LNG. "The negotiators, in short, are negotiating with other people's money, not their own . . . ." 32/ They argue that approval of the Amendment Agreement would, over the life of the contract,

> ". . . give Sonatrach some $25 billion more for its gas than the price at which it willingly contracted to sell the gas, and . . . saddle American consumers with some $25 billion more in costs than they would pay if the present contact were adhered to." 33/

As noted previously, PCM opposes approval of the Amendment Agreement on the ground that the applicants have failed to prove that the incremental cost of LNG at the burner-tip is less than the price of residual fuel oil. PCM calculates burner-tip prices using a methodology (which we will describe in greater detail below) completely different from that used by the applicants and concludes that the LNG price at the burner-tip to industrial users is higher than that of residual oil in a number of cities.

c. Conclusions

Before we reach a determination of whether the price proposed in the Amendment Agreement is reasonable in terms of its relationship with competing fuels, we believe it is appropriate in the circumstances mf this case to inquire as to whether it is reasonable in relationship to the price under the Initial Agreement. An important and troubling question is whether a new contract price that significantly exceeds the amount necessary to give Sonatrach full recovery of and a fair return on its costs is reasonable, especially since we have determined that reopening of the Initial Agreement was reasonable only because Sonatrach's costs greatly exceed its revenues under that contract.

Ordinarily we would expect to have before us a new LNG import proceeding a contract price that is comparable to that which the supplier charges to other customers, particularly where, as here, the prices to other customers have in some cases been approved by a U.S. regulatory body. Therefore, it is not surprising that the contract here was patterned after and resembles those approved by the DPC and the ERC, respectively, in Trunkline and Distrigas. However, this is a case where we are being asked to approve an agreement between Sonatrach and El Paso Algeria to abandon pricing provisions in a binding contract on which U.S. customers and consumers have relied and replace them with new pricing provisions which call for a price approaching the level we would expect if this were a new project.

The applicants point out that the renegotiated price here does give U.S. consumers of this LNG a price advantage over those consuming gas from the Distrigas and Trunkline projects. They point to the discounts that will be deducted from the price through June 1983, which they claim reflects the negotiated value of the "antiquities" of the old contract. We agree that these discounts are not insignificant--they result in a total savings of about half a billion dollars in the next two and one half years.

The applicants assert that while they initially attempted to negotiate a price with Sonatrach that was cost-based, Sonatrach adamantly refused to do so and insisted on a price which reflects the commodity value of the LNE. The discount schedule appears to `e a compromise of these positions, since the base price of $1.75 less the initial discount of $0.60 for the last six months of 1979 yields a net price of $1.15 per MMBtu, which in turn yields revenues for Sonatrach which are approximately equal to its current costs, including amortized capital costs. However, this favorable level of discount rapidly dwindles and disappears entirely on July 1, 1983.

There is yet another price advantage to this contract over those in Distrigas and Trunkline which should be considered--the $0.15 difference between the El Paso base price of $1.75 and the Distrigas/Trunkline July 1, 1979 sales price. This differential, unlike the discounts, will remain at the same proportional relationship to the total price for the life of the contract and will result in a significant savings to consumers of gas from this project.

If the contract price that had been agreed to by the parties had been cost-based, giving Sonatrach a fair return on its investment, we would have no difficulty in approving the price, given our determination that providing relief for Sonatrach's untenable financial situation through renegotiation of the Initial Agreement is not inconsistent with the public interest. At the other extreme, we would not approve the price if it were the same as that in the Distrigas and Trunkline projects, since it would reflect no consideration for the very valuable benefits, totalling over $06 billion over the life of the contract, which the applicants and, more accurately, U.S. consumers would forego by relieving Sonatrach of its original contract obligation.

We conclude that the compromise between these two extremes which the parties negotiated is not unreasonable in relation to the price under the Initial Agreement. Between the discounts and the original $0.15 differential, it does provide substantial consideration for relieving Sonatrach of its contractual obligations. We think it is not unreasonable for Sonatrach to seek a price which parallels those charged to other U.S. consumers rather than one that merely reflects costs. In considering the final negotiated amount, we must consider the circumstances as a whole and not substitute our judgment as to what we believe the most reasonable of all possible results would be. On balance, we believe the result arrived at in the negotiating process is not unreasonable.

Having decided that the initial sales base price of the Amendment Agreement is reasonable insofar as it relates to the Initial Agreement price, we turn now to consideration of whether it is reasonable in relationship to the price of alternative fuels.

In determining whether the proposed Interim Price in the first phase of this proceeding was reasonable, we stated that we have been

> "guided by two principles: (a) that at the burner-tip price-controlled, domestic fuels should not subsidize imported fuels; (b)

that imported LNG should be priced low enough to be able to compete with residual fuel oil on its own merits (without regard to rolled-in pricing)." 34/

After reviewing the evidence submitted in this proceeding, we reluctantly conclude that there is insufficient evidence in the record for us to make a determination of a representative price for this LNG at the burner-tip and therefore to make a precise comparison at that point with competing fuels.

The applicants' witness Schantz provided some information on transportation costs between the LNG terminals and the burner-tips of both residential and industrial customers in different jurisdictions, but even he testified that the information be submitted is not suitable for estimating incremental burner-tip prices.35/ His analysis is focused instead upon comparing the price of the imported LNG at the tailgate of the terminal with New York Harbor prices of competing fuels. The only detailed analyses of burner-tip costs are set forth in the initial briefs of Columbia and PCM, which, as we have noted, employ radically different methodologies to reach conclusions which are diametrically opposed.

Columbia asserts that a cost comparison at the burner-tip should not be made on the basis of the incremental cost of the LNG, but rather on the basis of rolling in the cost of the LNG in with that of other pipeline supplies. The reason advanced for this approach is that the oil price with which the gas price is compared is also a rolled-in price of foreign crude oil and controlled domestic crude oil prices. Columbia does, however, also advance the methodology for comparing the incremental cost of LNG to the cost of oil at the burner-tip that we have described above.

PCM, on the other hand, takes the view that, in addition to considering the fuel used or lost in the delivery mf the LNG, there should also be apportioned to it a pro rata share of embedded costs of the transmission and distribution facilities. It does so by using the actual distribution rates for gas delivered to different classes of customers and adding this to the cost of the LNG at the plant tailgate.36/ The methodology used by PCM substantially increases the price of the gas, so that PCM contends the burner-tip price of LNG would be higher than that of residual fuel oil in 1979 in many key metropolitan areas and that in each case the difference would increase significantly by 1984.37/ According to PCM's analysis, in fact, the LNG will barely be competitive with No. 2 fuel oil by 1984. For example, PCM argues that the 1980 burner-tip price of regasified LNG delivered to Albany, New York is properly computed by adding $0.98 transmission and distribution cost to the $3.43 tailgate price. Using this method the LNG would cost $4.41 per MMBtu at the burner-tip while, according to PCM, residual fuel oil would cost $3.46-$3.56 per MMBtu. PCM estimates the cost of the LNG to be $5.40 per MMBtu by 1984 and the price of No. 2 fuel oil to industrial customers to be $5.23-$5.90.38/

The wide disparity in the results yielded by these two methodologies points up the difficulty of attempting to make price comparisons at the burner-tip, although ideally that would be the logical place to make the comparison. On the one hand, Columbia's approach of ignoring embedded costs of transmission and distribution systems unrealistically favors LNG over domestic supplies of gas. On the other hand, Columbia correctly points out that the distribution costs to various customer classes in different cities are often established for purposes other than to reflect the true costs of distribution. Therefore, they too do not reflect the true incremental costs of LNG compared to alternative fuel supplies.

Given these circumstances, we believe it is appropriate to make the comparison at the point of regasification in the case of the LNG and at selected major cities in the applicants' marketing areas in the case of residual fuel oil, as requested by the applicants, but keeping in mind the fact that this tends to favor somewhat the LNG (which is consistent with the PCM position). We reject, however, the applicants' contention that we should compare the price of LNG with that of No. 2 fuel oil or other supplies of gas, rather than residual fuel oil. The applicants do correctly point out that in the markets served by them, natural gas and distillate consumption is approximately twice that of residual fuel oil, broken down as follows:)

Trillion Btu--1977

	Natural Gas		Distillates Residential/ Commercial	No. 6
Southern	425.5		133.0	45.0
Consolidated	1535.5		968.9	478.8
Columbia	1890.2		1173.5	543.3
	--------	---------	------	
	3851.2		2275.4	1067.1
			Industrial	
Southern	515.4		82.3	128.0
Consolidated	719.9		152.7	256.6
Columbia	847.6		207.6	330.4

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	2082.9	442.6	715.0
		Electric Utility	
Southern	53.0	72.0	163.2
Consolidated	8.0	84.3	686.4
Columbia	10.2	109.1	977.6
	---------	----------	------
	71.2	265.4	1827.2
Totals:	6005.3	2983.4	3609.3

Source:EX. SNG-19

These data show that most natural gas and distillate consumption is in the residential and commercial sector, as might be expected because residual fuel oil is not a practical heating fuel for small users. However, residual duel oil is the predominant petroleum fuel in the industrial sector on all three pipeline systems (although its use is much less than natural gas use), and in the electrical utility sector it is the predominant fuel of the three considered. The purpose of comparing LNG prices with those of alternative fuels is to determine whether the LNG is competitive at its marginal use. Because the marginal use of natural gas is in the industrial and electric utility sectors, it is appropriate to make comparisons with the principal alternate fuels in those sectors, which the applicants' own evidence shows to `e principally residual fuel oil. While we think it is also proper to take into account the cost of other fuels, we remain convinced, based on the record in this case, that the residual fuel oil comparison should be given the greatest weight. We do, however, think it is appropriate to compare the price of regasified LNG with both high sulfur (above 1.0 percent) and low sulfur (0.3 percent) residual fuels, since both are used extensively in the marketing area served by the applicants, depending upon local environmental restrictions.

Representative prices for No. 6 oil were provided by the applicants' witness Schantz in Exhibit SNG-19 and can be summarized as follows:

City	Price per MMBtu
Atlanta	$3.41
Birmingham	3.13

Charleston	3.19
Albany, NY	3.22
Cleveland	3.55
Pittsburgh	3.58
Columbus, OH	3.59
Baltimore	3.77

In each case, the price represents an estimated delivered price on January 1, 1980 (based on September 1979 data) for residual fuel oil mf a sulfur content consistent with local environmental restrictions.

The regasified price of LNG on January 1, 1980 of $3.43 per MMbtu falls in the middle of this range of residual fuel oil prices. In general it is somewhat higher than the price of residual fuel oil in industrial cities of the South (where higher sulfur residual fuels are permitted) and somewhat below those of the northern cities (where sulfur restrictions are generally more stringent).39/

After adding transmission and distribution costs, we recognize that the price of this LNG at the burner-tip will in all probability be at best at the high end of the range of residual fuel oil prices. However, there are many factors that make anything but the broadest comparisons meaningless.40/ It is enough for present purposes to find that the LNG is in a "competitive range" with residual fuel oil, which we believe is the case here even though in several markets residual fuel oil is somewhat cheaper.

For the foregoing reasons, we find that the initial f.o.b. sales price of the LNG of $1.94 per MMBtu Arzew, as of January 1, 1980, is reasonable and not inconsistent with the public interest.

2. The Escalator Clause

Under the Amendment Agreement, the contract sales price (f.o.b. Arzew) is calculated on July 1, 1979 and on the first day of each succeeding January and July in accordance with the following formula:

P=U.S.$1.75 (0.50) F + (0.50) F' - Y

F1 F1

In the formula, the contractual sales price per MMBtu (P) equals the base sales price of $1.75 multiplied by the adjustment factor (or escalator) less any discount (Y). The adjustment factor is based upon equally weighted changes in the averages of certain prices of No. 2 heating oil F/F1 and No. 6 residual fuel oil F'/F1 published in Platt's Oilgram.

The values for F and F1 are derived from the arithmetic average of the high daily prices, in dollars per barrel, published in Platt's under the heading "South and East Terminals (N.Y. Harbor area) No. 2 Fuel." F1 equals the average price during the period December 1, 1978 through May 31, 1979, or $19,654. F equals the average price for any six month period ending one month prior to the beginning of the period for which a new contractual sales price is calculated.

The values for F' and F1 are derived from the average of the daily high and low prices, in dollars per barrel, of No. 6 fuel, low pour, having a maximum sulfur content of 0.3%, published in Platt's under the heading "Atlantic and Gulf Coast Resid (New York District) No. 6 Fuel Oil." F1 equals the average price during December 1, 1978 through May 31, 1979, or $18.609. F' equals the average price for any six-month period ending one month prior to the beginning of the period for which a new contractual sales price is calculated.

The discount schedule (Y in the formula) is set forth above in the discussion of the base price.

Calculation of the contractual sales price effective on July 1, 1979, resulted in a price of $1.15 per MMBtu, Arzew.41/ This price was approved for the period July 1, 1979 through December 31, 1979 in Opinion No. 7. The contractual sales price effective on January 1, 1980, under the Amendment Agreement would be $1.9448 per MMBtu.42/

In a world of rapidly rising energy prices, it is necessary that we give close scrutiny to the escalator clause, since its operation will determine whether the price of this LNG will remain reasonable over the life of the contract. We have previously recognized the need for price escalation in order to protect the supplier from changes in world economic conditions that may reduce the value of the revenues derived by the supplier from the sale of the LNG over the life of the contract.43/ Indeed, the lack of such protection in the Initial Agreement between Sonatrach and E1 Paso Algeria has necessitated the present proceedings to consider the Amendment Agreement.

In the present Amendment, it is apparent, both from the escalator and the renegotiation provisions of sections 3 and 4, that the parties intended that the price paid Sonatrach for this LNG, plus the costs of transportation and regasification, would result in a price on the east coast of the United States that would be competitive with imported fuels, including both No. 2

and No. 6 fuel oils and natural gas. Thus, escalation here is based not on general indices of inflation in the economy but on the cost of competing forms of energy. The effect of this escalator, therefore, is not necessarily to preserve the value of the monetary consideration (which is the usual purpose of an escalator clause in a sales contract), but to preserve the LNG's commodity value as we proceed into a very uncertain energy future.

In previous decisions, we have generally rejected any price escalation formula for imported LNG which is pegged entirely to the world market price of crude oil or refined products or changes in their prices. Such price escalation provisions applicable to new import projects were specifically disapproved in the Pacific Indonesia LNG, Tenneco Atlantic and El Paso II cases.44/ Indeed, the escalator formula contained in the Amendment Agreement is essentially identical as those previously rejected in the Tenneco Atlantic and El Paso II cases and is tied even more directly to oil price increases than the initial escalator which was rejected in Pacific Indonesia.

On the other hand, the escalator formula here is also virtually identical to that which was approved by ERA in the Distrigas case,45/ and as that approved by the FPC in the Trunkline case.46/ Today, in Border Gas, Inc.,47/ we are approving an escalator clause for pipeline imports of Mexican natural gas that is tied entirely to Platt's Oilgram price reports of six representative crude oils imported into the U.S.

We are faced in this case with the task of reconciling these precedents and applying them to the escalator clause at issue here.

The fact that Sonatrach has insisted on an escalator provision that ties the price of this LNG to market level prices for imported petroleum fuels points up a principal reason why imported LNG should be low on our Nation's list of priorities for incremental supplies of energy. Most of these incremental LNG supplies are produced in countries such as Algeria that produce and sell crude oil in a world market that has recently been characterized by enormous price increases. Given today's market conditions, it is not unexpected that these producing countries would attempt to extract similar price increases for their competing LNG supplies. This, therefore, only demonstrates that these LNG supplies are no more secure, and provide no more protection against exorbitant price increases, than imported oil.

Here, however, we are lot dealing with a new project, but an ongoing one. We also have here a project in which the escalator clause is virtually identical to those in two other LNG projects involving imports from Algeria that have already received U.S. government approval (Distrigas, which is ongoing, and Trunkline, which is nearing completion). While the approval mf this oil-based escalator would appear to be inconsistent with our prior decisions involving new projects, disapproval could not be reconciled with the contracts under which other Algerian LNG will be imported, especially considering the fact that the total price in this instance (taking into account the discounts and $0.15 differential discussed above) is more favorable to U.S. consumers. Moreover, as we noted above, the price of this LNG after regasification is competitive with alternative fuels, and the escalator is designed in such a way that it is likely to remain so over the life of the contract without need for renegotiation. Finally, we cannot ignore the fact that the present project is also an ongoing one, involving substantial investments by the U.S. parties in tankers, terminals and regasification facilities. Failure to approve an escalator provision here that is oil-based and virtually identical to those under which other Algerian LNG is imported would jeopardize those substantial investments, ultimately to the detriment of U.S. gas consumers.

Therefore, because of the ongoing nature of this project, and the fact that it has a similar escalation provision to those involved in the Distrigas and Trunkline projects but results in an even more favorable total price, we conclude that this oil-based escalator is reasonable and not inconsistent with the public interest. We emphasize, however, that this conclusion is based on the unique circumstances of this ongoing project.

With regard to the specifics of the escalator clause, two principal concerns were raised by the parties at the hearing. The first is that Platt's Oilgram posted prices for No. 2 and No. 6 fuel oils at New York Harbor do not adequately represent prices at which actual transactions for such fuels take place. In order to provide as full a record as possible on this issue, we directed that Mr. Bruce Chalfont, the editor of Platt's Oilgram, be called as an ERA witness, where he underwent extensive cross-examination on the methodology employed by Platt's in reporting New York Harbor fuel oil prices.

Among other things, the record clearly shows that the prices published in Platt's are posted prices and do not necessarily reflect actual transaction prices or even whether any sales took place at the posted prices on any particular day.48/ Furthermore, the prices in Platt's are not weighted by volume and, therefore, may overstate to some degree the amount of change occurring in the marketplace.49/ Based upon Mr. Chalfont's testimony, it is apparent that the Platt's Oilgram postings are not an accurate reflection of actual fuel oil transactions on any particular day, and we would find them unacceptable if they were used as a basis for pegging LNG prices at any given time.

That is not the purpose for which Platt's postings are used in the escalator, however. Rather, they are used as the basis for measuring changes in fuel oil prices over time. This distinction is important, for the record indicates that while a Platt's posting on any particular day may be an inaccurate reflection of actual prices on that day, the discrepancies tend to even themselves out over time. Over a six-month period they are a reliable indicator mf the rate of change of contract fuel oil prices in New York Harbor. Indeed, no party was able to offer evidence rebutting the applicants' assertion that, notwithstanding its imperfections, Platt's postings are as reliable a means as exists to measure changes in fuel oil prices over time.50/ Therefore, we find that the use of Platt's postings for this purpose is reasonable.

The other principal concern raised with respect to the escalator clause is that, with regard to No. 2 oil only, it relies only on Platt's daily high price posting, not the average of the high and low as is the case for No. 6 oil.

The omission of the low price postings for No. 2 heating oil raises serious concerns as to whether changes in the distillate heating oil market are accurately reflected in the escalator. If the escalator is truly intended to index the sales price of the LNG to changes in the price of competing fuels imported into the eastern United States, then omission of a segment of that market is significant.

Neither the applicants nor El Paso Algeria were able to offer an explanation for the curious omission of the low prices for No. 2 oil from the formula, other than that it was insisted upon by Sonatrach in the negotiations. Sonatrach's witness provided the following explanation:

> Administrator Robinson: Dr. Belguedj . . . why when you took No. 2 oil instead of using the average of the high and low in Platt's Oilgram as you did for No. 6 oil, you insisted as is apparently the case from earlier testimony, that you use only the high price in Platt's Oilgram for No. 2 oil.
>
> The Witness: Because in our opinion, it was the nearest reference to the market value, the intrinsic value of the gas rather than the low and the high or an average of the two.
>
> Administrator Robinson: Why did you have that opinion?
>
> The Witness: Our own assessment of the substitutable energy would be the highest, at least it would be reflected in the highest price, not in the high and the low.
>
> Administrator Robinson: Is another way of putting that that in your opinion natural gas as a fuel was in effect at least equivalent to or somewhat, even somewhat superior than No. 2 heating oil, and therefore a fair comparison of relative prices would have you at the high end of the range of No. 2 oil prices as opposed to the middle of the range which

would imply that it is equivalent to and not at all superior to No. 2?

The Witness: Exactly correct.51/

Even if one accepted the premise that the price of this natural gas should reflect a premium over No. 2 fuel oil, which we do not (as discussed in the section on the base price, supra), we find this explanation unacceptable because it ignores the distinction discussed above that the purpose of the escalator chosen here is not to provide an accurate reflection of actual fuel oil prices at any given time but to reflect accurately changes in those prices over time.

El Paso Algeria's witness testified that even though El Paso finally agreed at the eleventh hour of the negotiations to the use of only the high No. 2 oil price, he was unable to justify it and could not "legally support it." He testified further, however, that the El Paso negotiators did not press for use of the average of high and low No. 2 oil prices because they did an analysis during the negotiations which indicated that it would not have made any significant difference if it had been in effect in the then recent past.52/

But, this analysis covered a period of relatively stable oil prices. Therefore, we have compared the rate of change mf Platt's daily high prices of No. 2 heating mil with the average of the high and low during the past twelve months and found that the daily high price increased at a rate somewhat greater than that of the daily low or average price (see Figure 1). The difference is not insignificant--using the average of the high and low No. 2 oil prices in lieu of the high price only results in a January 1, 1980 price of $1.8940 per MMBtu, rather than the $1.9448 that would otherwise obtain.

This is a phenomenon that can be expected whenever fuel oil prices are rapidly escalating, as they did during 1979 and as they undoubtedly will during early 1980 because of the substantial increases in crude oil prices recently announced by many exporting countries. To the extent that this divergence continues in the future, the adjustment factor formula presented in the Amendment Agreement will fail to represent fairly changes in the market price of imported petroleum fuels./53

[FIGURE 1, Distillate Fuel Oil, New York Harbor--Not Reproduced.]

While we are concerned about the lack of a good rationale for using only the high No. 2 oil price for determining the rate of change in No. 2 oil prices and the possibility that it will work to the disadvantage of U.S. consumers in a rapidly rising oil market, we note that a provision exists in the contract for correcting any distortions that may result. Under Section 4 of the Amendment Agreement, either party may renegotiate a "fair and reasonable" adjustment in the price, beginning in 1982 and every four years thereafter, if the price, under the contract does not over time reflect market conditions then existing for natural gas and other competing forms of energy. We would expect El Paso Algeria to use this provision to correct any significant distortions in the price paid for this LNG. In light of this avenue of relief, we believe that on balance, and considering the overall favorable price terms under the Amendment Agreement compared to other natural gas imports, we do not believe it would be in the public interest to reopen this agreement solely to correct this feature of the escalation clause.

A final point concerning the renegotiation provision of Section 4 deserves mention. If fuel oil prices continue to increase, it would be expected that the regasified price of this LNG would decline relative to fuel oil prices, since only the f.o.b. portion of the LNG price is tied directly to fuel oil prices. Most of the rest of the regasified price represents the embedded costs of the LNG tankers and regasification facilities and will not change significantly over time.

A concern was expressed by one of the parties (the New York Public Service Commission) at the hearing that the renegotiation provision will allow Sonatrach to reopen the contract every four years and "capture" all of the LNG price advantage that results in this fashion. We share this concern, but it has been allayed to some extent by the assertion of El Paso Algeria that it interprets the "fair and reasonable" language of Section 4 as preventing Sonatrach from capturing this advantage and that it will take that position in any future negotiations.54/ While we would not rely entirely on these representations standing alone, we note that any renegotiated price resulting from these periodic reviews must be submitted to the ERA for approval, and therefore we will have the opportunity to prevent changes in the f.o.b. price which attempt to capture the advantages inhering from fixed transportation and regasification costs. Therefore, while we share the concern of the New York Public Service Commission on this issue, again we think on balance adequate protection exists in the terms of the agreement itself and our right to approve subsequent price adjustments to make it unnecessary to risk jeopardizing this gas supply by ordering renegotiation of this contract provision.

C. Whether the Amendment Agreement Will Have a Significant Adverse Impact on U.S. Balance of Payments

Among the issues that are within the jurisdiction of the ERA to consider in reviewing a natural gas import project is whether the project will have a favorable or adverse impact on U.S. balance of payments. In this case, the answer depends on the perspective from which the project is viewed. Compared to no LNG project at all and substituting the volumes with imported oil, the balance of payments impact of the Amendment Agreement is highly favorable. But compared to the project under the Initial Agreement, the impact is highly unfavorable.

The proponents of the Amendment Agreement argue that the alternative to approving the Amendment would be to import foreign oil, since the LNG supply surely would be terminated. Given the high price of the latter, they assert that the importation of LNG would have a beneficial impact on our balance of payments:

> . . . [T]he only true alternative is the importation of approximately 70.8 million additional barrels of oil annually or almost 200,000 additional barrels of oil a day. Compared to imported oil, the impact on the United States balance of payments of this LNG import is sharply positive.55/

By comparing the cost of imported LNG under the Amendment Agreement to pre-November 1979 contract prices for Saudi Arabian light crude oil, El Paso Algeria finds that "approximately $2.8 billion would flow out of this country if oil was imported instead of LNG between 1980 and 1983."56/

At the opposite extreme, CFA/CECA compare the cost of the LNG to that which would be incurred if the contract were not amended at all, on the ground that "there is . . . nothing in this record that would permit a finding that Sonatrach or Algeria will actually refuse to perform in accordance with the terms of the 1969 contract and the existing import authorization."57/ They argue that the Amendment Agreement would cost the U.S. an additional $640 million to $1.1 billion per year.58/

We have said enough earlier in this opinion to indicate our view that if we insisted that Sonatrach adhere to the terms of the Initial Agreement, it is highly unlikely that Sonatrach would continue to provide this LNG, even if there are no express statements to that effect contained in the record. Therefore, without identifying the precise dollar amounts, we find that approval of the Amendment Agreement will result in very substantial balance of payments benefits to the U.S. compared to the only realistic alternative in the near future, which is to replace these volumes of LNG with imported petroleum.

D. Whether There Is a Need for This LNG Supply

Any attempt to evaluate the need for specified volumes of LNG at the proposed increased rate over an 18-20 year period is an attempt at fortune telling. Nonetheless, a substantial amount of evidence was placed in the record on this subject, and we believe it is both necessary and appropriate to evaluate as best we can, particularly for the near future, whether there is a need for this supply of LNG at the increased price.

The FPC, in 1972 in Opinion No. 622, found that there was a need for this gas, but at a base price of 30.5 cents, not $1.75. Furthermore, the energy situation in the U.S. has changed drastically since 1972, to a degree which renders any determination made from the perspective of 1972 utterly irrelevant.

The most dramatic changes, of course, have been the enormous increase in the price of imported petroleum and the U.S.'s increasing dependence on foreign supplies. The United States today imports considerably more crude oil than it did in 1972 when this project was initially authorized.59/ This dependence has reached the point where it is a serious threat to our national security, as reflected in the March 14, 1979 finding made by the Secretary of Treasury pursuant to Section 232 of the Trade Expansion Act:

> On January 14, 1975, acting pursuant to the same Section 232 authority, Treasury Secretary Simon found that the nation's dependence on imported oil was so great as to threaten to impair the national security and recommended to President Ford that action be taken to remove the threat. That conclusion is, unfortunately, even more valid today. . . . This growing reliance on oil imports has important consequences for the nation's defense and economic welfare.60/

Given the chaotic world supply situation, future prospects for imported oil are, at best, doubtful.

There have also been dramatic changes in U.S. energy policy since 1972 that will likely affect the future need for this supply of LNG. To mention just a few, recent legislation, such as the Powerplant and Industrial Fuel Use Act of 1978, which prohibits the use of gas as boiler fuel in new powerplants and other major fuel burning installations and severely limits its use in existing facilities, will retard industrial growth demands. The Natural Gas Policy Act of 1978 (NGPA) is expected to stimulate domestic production of natural gas by providing substantial price incentives. Furthermore, the effect of Title II of the NGPA, which mandated incremental pricing under certain circumstances, will be gradually to make coal more competitive with gas, as gas prices to boiler fuel users move toward the price of residual fuel oil. When the price differential becomes great enough to justify the capital costs of coal conversion, including equipment necessary to meet environmental regulations, existing facilities currently burning oil or gas may be induced to convert to coal.

Because the prices that will be paid by U.S. consumers for this supply of LNG is proposed to be substantially increased, and also because the total energy situation has changed so drastically since 1972, we believe it is both appropriate and necessary to re-examine the applicants' need for this gas supply under these new circumstances.

1. Summary of the Evidence

It is clear from the record that the Southern pipeline system has an immediate and continuing need for this Algerian LNG. Southern's gas sales for the last five years have averaged 595 Bcf annually. To prevent deterioration of its gas reserves, Southern has attempted to replace this volume of gas each year but has only been able to replace an average of 217 Bcf per year.61/ Given that Southern has been unable to replace approximately 63.4 percent of its annual consumption, it would be virtually impossible for Southern to replace this supply of LNG if it were lost. It represents approximately 48 percent of the total committed gas reserves of Southern, due to the continued decline of its domestic gas supplies,62/ and is about 13 percent of system deliverability from presently contracted and committed sources over the next ten years.

Southern has made and is making extensive efforts to attach additional domestic gas supplies to its system.63/ It has made substantial advance payments to gas producers for the commitment of new reserves.64/ In the last decade, Southern has invested approximately $290 million in three large gathering systems offshore in the Gulf of Mexico and related onshore facilities: the Main Pass-South Pass system, the West Delta system, both owned by Southern, and Sea Robin Pipeline, which is a joint venture composed of subsidiaries of Southern and United Gas Pipe Line Company. In addition, Southern's wholly-owned subsidiary, SONAT Exploration Company, has been active in exploring for gas. SONAT has interest in 72 exploratory lease blocks in the Gulf of Mexico, 12 of which are currently producing oil and gas.65/ Southern does not consider that Alaskan gas will be available to it in the near future, but that if Southern does eventually contract for such gas, it would assist in diminishing long-range high priority curtailments, which are projected to occur even with continuation of the LNG supply. Southern expects the Alaskan gas to be considerably more expensive than the present LNG supply.66/

Presently, Southern is negotiating for purchase of Nigerian LNG and is exploring the possibilities of an Arctic pilot project.67/ Southern is a 6-2/3 percent partner in Border Gas, Inc. which has recently received approval from ERA (ERA Docket No. 79-31-NG) and the FERC to import Mexican gas. It will receive approximately 20 MMcf/d from the project.68/ Furthermore, in an effort to insure that these gas supplies are available for high priority uses year-round, Southern has expended $66 million to develop the Muldon Storage Field and expects to expend $106 million to develop the Bear Creek Storage Field. These fields will be used to inject gas into storage during the warm weather period for later use by high priority users during the winter heating season.

Despite these efforts, Southern has stated that it is presently in curtailment and would have to curtail its highest priority requirements on a year round basis if it were to lose this LNG supply.69/ Even with the addition of substantial new reserves, Southern will be able to serve only Priority 1-3 customers through 1984. If LNG were lost to Southern and its customers, it would be curtailing into Priority 2 (essential agricultural users) in 1980 under either its high or low assumption case with respect to discovery of new gas reserves, and would barely be able to meet Priority 1 requirements by 1987.70/ On the other hand, as pointed out by CFA/CECA, while "Southern has the greatest need of the three pipelines for this LNG supply, even Southern could serve all of its high-priority loads this winter without LNG. . . ."71/

Columbia has not shown a need for the LNG before 1981.72/ As Exhibit No. CGS-12 demonstrates, Columbia's gas surplus is expected to be 45.08 Bcf in 1979, 69.24 Bcf in 1980 and 51.20 Bcf in 1981.

Columbia will be able to meet the market requirements of its customers at least through the contract year 1987, the last year of its projections.73/ Exhibit No. CGS-12 shows that many of Columbia's current supply sources will steadily decline through 1987; the shortfall will be made up by withdrawing greater amounts each year from storage and by purchasing Canadian gas which may be coming on line by 1980.74/

However, if the Algerian LNG supply is lost, Columbia has projected that it will be in a seasonal and peak day supply deficit at least through the contract year 1984, even if the system sustains no future growth. Exhibit No. CGS-13 shows that without the 110 Bcf per year from this project, Columbia would run deficiencies of 34 Bcf, 42 Bcf, 85 Bcf, 40 Bcf and 56 Bcf for the years 1980 through 1984, respectively.75/ Thereafter, Columbia projects that it could contract for additional gas from other sources, such as the Gulf of Mexico, Gulf Coast area, and Canada, or other LNG supplies,76/ to offset the loss of supply and still meet it customer requirements. However, this gas would be at least as expensive as the total costs associated with the Algerian LNG supply.77/ Unlike the Southern system, Columbia is not curtailing service to any of its customers at present, although it was in theoretical curtailment from November 1, 1978 to April 1, 1979.78/ Columbia states in its Initial Brief that loss of this LNG supply would force it into curtailment through 1984.79/

PCM argues that more current data provided by Columbia to the FERC on October 1, 1979 on FERC Form 16 contradicts Exhibit No. CGS-13.80/ Whereas that exhibit shows that without the 110 Bcf of LNG there would be a deficiency of 34.4 Bcf in 1980, PCM asserts that there would in fact be a surplus of 178.8 Bcf, even without the LNG, due to an increase in pipeline supply from Southwest and a decrease in Columbia's requirements. According to projections by PCM, even without the LNG Columbia should have a significant surplus of gas each year through 1987, except in 1983 where a deficit of 8 Bcf is projected.81/ The PCM projections assume continued growth in the residential and commercial markets, but not in the industrial market.

Of the three applicants, Consolidated is presently experiencing the best supply situation.82/ For the years 1979, 1980, and 1981 the annual excess supply will be 80 Bcf, 110 Bcf and 120 Bcf, respectively. Consolidated has entered into two off-system sales, one with Consolidated Edison and the other with Texas Gas Transmission,83/ and has also reduced U.S. pipeline supply takes since 1978. By the end of 1979, it will have turned back approximately 104 Bcf of gas.84/ Finally, the system is not presently pursuing additional sources of supply. For example, it is not attempting to contract for new leaseholds in the Louisiana area, although it does participate occasionally in leasing programs for Louisiana off-shore lease sales;85/ it is not engaged in efforts to purchase either Canadian or Alaskan gas, nor is it sponsoring new pipelines;86/ it is not attaching as many production or gas purchase contract wells in 1979 as it did in the past;87/ and it is only operating 20 percent of its Appalachia acreage.88/

Consolidated's pipeline supply projections beyond 1980 generally indicate a short term improvement in pipeline supply, which exacerbates the short term surplus; however, by the end of the 1980's, even with the LNG, a deficiency is projected.89/

The West Virginia Public Service Commission asserted that Columbia LNG Corporation and Consolidated System LNG Company have failed to show that the LNG is needed to meet the high priority, residential and commercial gas requirements of their respective systems.90/ An analysis of Exhibits CGS 12, 13 and 14 and Exhibit CNG 13 indicate that the LNG supply is not necessary to meet high priority demand for the contract years from present through 1987 (Columbia) and 1988 (Consolidated).

Finally, unlike Southern, Consolidated is not curtailing and has not been curtailing since May 1977.91/ Even if it were to lose its LNG supply, which is 26 percent of its reserves, its projected annual surplus each year through 1982 is enough to serve its traditional customers until then without bringing on line alternate sources of supply.92/

2. Conclusions

Clearly, there is no uniformity among the three applicants regarding need for this LNG, according to the evidence in the record. On the one extreme is Southern, which is critically dependent on this LNG supply; on the other extreme, Consolidated has no apparent need for this gas until 1982. Furthermore, projections by Columbia and Consolidated for the later years are likely to have overstated the potential need for LNG due to conservative assumptions regarding availability of gas from domestic sources, either conventional or exotic, and a decrease in consumption resulting from increased conservation.93/

The evidence provided by each of the applicants on need for the gas reflects the traditional supply/demand analysis required by the Federal Power Commission in support of applications for new projects in an era when gas supplies were generally plentiful and there was little concern about the displacement (or replacement) of imported oil subject to abrupt interruption. Much of the evidence in the record here, particularly concerning the requirements of the pipelines' customers, derived from curtailment plans and information of the early 1970's.

This traditional pipeline-by-pipeline analysis as presented `y the applicants is of some usefulness in assessing regional need for this gas supply, but a broader view is necessary to put this information in perspective. For example, it does not reflect that gas supplies are easily transferred from one system to another and that a surplus gas in one system can be used, either by actual transfer or displacement, to ease a shortage being experienced elsewhere by a pipeline in curtailment. Lone of the three applicants provided significant evidence concerning displacement of crude oil or petroleum products by the importation of this LNG, and only little evidence was submitted concerning displacement of domestic gas by this supply. There are some fundamental features of today's energy situation that have a substantial bearing on these issues, however, and we feel compelled to take official notice of them if we are to reach a realistic conclusion as to the need for this gas.

As stated above, the Consolidated system is presently turning back domestic gas supplies and making off-system sales of gas. The companies to whom Consolidated is making the two off-system sales are using the domestic gas purchased for boiler fuel or electric generation and to displace imported fuel oil.94/ In addition, the domestic gas which Consolidated has been turning back since December 1978 is presumably being sold to other pipelines to reduce their curtailments, thereby improving gas supply situations elsewhere.95/ Incremental energy needs are met with this turned-back domestic gas which would otherwise be filled by imported crude oil or petroleum products.

Given the tight international energy supply situation, which may potentially be further exacerbated by recent events in Iran and elsewhere, in which the United States is competing with other net energy importing countries for sources of energy, this Algeria LNG is an appreciable and relatively secure addition to the total U.S. energy supply over the next 23 years. When the full contract volumes of 1 Bcf/d are delivered, this will displace the equivalent of 200,000 barrels of oil per day, which is roughly 3 percent of the Nation's petroleum imports and about 30 percent of the amount the U.S. was until recently importing from Iran. In today's tight petroleum market, the sudden loss of this LNG supply and its replacement by petroleum products would almost certainly exacerbate current problems in meeting the Nation's demand for gasoline and heating oil.96/

Thus, while it has not been shown conclusively that all three of the applicants' systems need these gas supplies at this time, we find that the incremental increase in the total U.S. energy supply as a result of these LNG deliveries is important in fulfilling an overall national need for additional gas supplies, and that these particular supplies will directly or indirectly find their way to regions of the country where a need for additional supplies exists.

E. Whether ERA Should Require Direct Sales to Distribution Companies

1. The Presumption in Favor of Direct Sales

In previous decisions on proposed LNG import projects, we have enunciated a presumption in favor of direct commitments to purchase imported LNG on the part of state-regulated distribution companies, as distinct from the interstate pipeline companies. For example, in Opinion No. 3 we stated that:

> . . . where regional need is assessed, ERA will look for a demonstration of end-user market need, as opposed to a mere showing of an interstate pipeline company's contractual obligations to deliver gas. The latter evidence would generally be an unreliable indicator of regional need, insofar as it does not reflect the impacts of energy conservation measures, conversion to alternate fuels by low priority customers, and self-help measures taken by end-users and gas distribution companies.
>
> Local gas distribution utilities are in the best position to determine the needs of burner tip users. A natural gas distributor has full knowledge of its system needs and is in the best position to make the hard rational decisions on the volume and source of supplemental gas supplies it wishes to pursue. Therefore, the Federal Government, by approving LNG import projects which do not serve the actual requirements of natural gas utilities, would be exercising unwarranted preemptive control over the decisions of individual utilities and state regulatory commissions.
>
> Indeed, the best test of particular regional or sub-regional market for an import is the degree to which gas distribution utilities will directly contract for the proffered gas supplies. Moreover, reliance on decisions by state-regulated entities whose utility obligations tie them directly to consumer and community needs will promote flexibility; whereas exercising Federal authority to impose the consequences of pipeline companies' LNG purchases on their customers tends to stifle

competition. Accordingly, ERA maintains a presumption in favor of directly committing imported LNG to state-regulated distribution companies or end-users, unless there is a clear, overriding national need shown for a different project structure.97/

In our "Order Modifying Pre-Hearing Order" (October 18, 1979), we explicitly stated that the presumption in favor of direct sales contracts was precedential in this proceeding, and that the applicants would have the burden of demonstrating either that the distribution companies served by the project were willing to purchase the gas directly from the applicants, or that there was something about this case which distinguished it from previous cases where we applied the presumption. In addition, we asked the applicants to conduct a survey of their customers to determine whether the latter were willing to enter into direct contracts for the purchase of the gas from this project based on the terms and conditions of the Amendment Agreement.98/

2. Positions of the Parties

The applicants argue that the rolled-in mode of pricing approved by the FPC in this case in Opinion No. 786 precludes any restructuring of the project by ERA to require direct sales to the customers of the applicants' affiliated pipeline companies. The imposition of such a requirement on the participants in this ongoing project, they claim, would violate the doctrine of res judicata. 99/

The applicants further assert that the provisions of Title II of the NGPA bar any kind of incremental pricing--of which they claim direct sales would be one type. Since Section 207(a)(1) of the NGPA provides that LNG projects authorized on or before May 1, 1978 are exempted from the passthrough requirements for first sale acquisition costs, they argue that we are precluded from ordering direct sales to distribution companies.

Further, they maintain that even if it were concluded that ERA has some discretionary authority to order incremental pricing, direct sales still could not be imposed because the only permissible form of incremental pricing is that provided for in Title II of the NGPA, citing Congressional debate and the Conference Report on the NGPA.

Lastly, the applicants assert that ERA's presumption in favor of direct sales is not precedential in the present case since the issues presented by their application are distinguishable from those involved in Opinions No. 3 and 4 (the Tenneco Atlantic and El Paso II projects, respectively). Those opinions dealt with proposed import projects where no facilities had as yet been built, and where new volumes of gas would be added to the system supply of the pipeline company affiliates of the importers. The present case, on the other hand, involves a supply of gas that is already flowing to the pipelines' customer distribution companies.

At the pipeline level, the applicants argue that the flowing gas from the project as presently structured constitutes an essential part of system supply,100/ on which the applicants, their pipeline affiliates, distribution company customers, the FERC (in curtailment proceedings), and state utility commissions all have relied. To require direct sales at this late stage, the applicants argue, would raise a host of practical problems which conceivably would result in total failure of the project and loss of the gas supply.101/

Southern makes an additional argument, unique to its affiliated pipeline system, that direct sales are not feasible for the vast majority of the pipeline's customers which are small and depend solely on Southern to obtain the imported LNG. In support of this position Southern notes that the small municipal gas utilities which predominate on Southern's system have wide variations in their daily gas requirements. In the winter, when demand peaches peak levels, they rely on Southern to serve their high priority needs; in the summer, according to Southern, the load factor varies among the customers but is generally quite low. Consequently, these small customers have limited, if any, ability to acquire any supply of gas such as LNG which has uniform or nearly uniform daily rates.102/

The applicants' opposition to direct sales has the concurrence on brief of the great majority of the parties to this proceeding, most of whom are distribution company customers of the applicants' affiliated pipelines. The customer surveys on this issue also indicate an overwhelming preference for continuation of the status quo with regard to rolled-in pricing and a corresponding opposition to purchasing the LNG under direct contract.

Washington Gas Light Company argues that if ERA should find rolled-in pricing inappropriate, incremental pricing under Title II of the NGPA is the proper alternative and the direct sale requirement is definitely not in the public interest.103/ General Motors and the Georgia Group, representing industrial users of natural gas, assert that Title II provides not only the most appropriate, but also the sole, lawful form of incremental pricing, although they too argue strenuously with the applicants for continuation of full rolled-in pricing as the best choice.

The only unequivocal support in this proceeding for the direct sales mechanism is found in the briefs of PCM and the West Virginia Public Service Commission (WVPSC).104/

WVPSC regulates the retail rates and practices in West Virginia of distribution company customers and affiliates of the pipelines to which Columbia and Consolidated sell regasified LNG from the El Paso I project. It urges denial of the application primarily on the grounds that these particular applicants have not demonstrated need for the gas at the new price. WVPSC appears to leave the way open, however, for approval of importation of LNG at the proposed price for the third applicant, Southern.105/ But if ERA should approve the contract amendment, WVPSC argues that the applicants should be required to enter into direct contracts with distribution companies for the purchase and sale of the regasified LNG as a condition to such approval:

> The LNG involved in this project is proposed to be at a dramatically different price subject to different escalation vis-a-vis the preceding contractual pricing mechanism. It is appropriate that ERA develop through the direct purchases requirement a test of need for the LNG measured by the willingness of the distributors served by the pipelines buying the imported LNG to purchase the gas directly from the importer at its cost and in the quantities necessary to meet the distributors' demand. This will enable the distributor to determine its need for a marginal gas source. Furthermore, the various state regulatory commissions will have the ability to scrutinize the distribution company's need for the LNG at its cost and further more make decisions as to how it should be priced at a retail level. . .106/

The other advocate for direct contracting as an appropriate test of need, PCM, also argues that Columbia and Consolidated have failed to bear the burden of demonstrating that the presumption is not applicable here, that their customers are willing to enter into direct contracts, or that the gas is in fact needed. However, despite the failure of these surveys to indicate any willingness by their customers to enter into direct contracts, which PCM considers a failure to rebut the presumption as required in this case, PCM would accept an order in which ERA granted the applicants approval of the requested Amendment (subject to Title II incremental pricing) for one year, within which period the applicants would have to demonstrate a need for the gas and a willingness on the part of their customers to contract directly for it. In this manner, PCM argues, the applicants' assertions that the presumption is not applicable because this is an ongoing project would be deprived of any force which they might otherwise have.107/

As to the applicants' more fundamental objections to the imposition of direct sales as violating the doctrine of res judicata and as being precluded by Title II of the NGPA, PCM argues that the ERA's discretionary authority to impose incremental pricing is clear in the present case because "the importation of LNG from Algeria . . . under the terms called for by the amended contract has not been authorized. Indeed, whether importation should be authorized is the very subject of this proceeding."108/

3. Conclusions

We are not convinced that we are precluded legally from requiring direct contracting for the LNG by distribution companies. First, the applicants' argument that the initial FPC import authorization allowing the regasified LNG to be sold to the affiliated interstate pipelines is res judicata is without merit. As discussed further in Section F, Amendment 3 has substantially changed the complexion of the original import proposal before the FPC. Thus, in determining whether the new base price of the LNG meets the standard of Section 3 of the Natural Gas Act, we are not precluded from ordering direct sales, if that contract structure is necessary in order for the new price to be not inconsistent with the public interest.

Likewise, we are not precluded from requiring direct sales by Title II of the NGPA. The kind of end-use incremental pricing required by Title II, leaving aside for now the issue of whether this particular project is grandfathered under that scheme, is entirely different from, and consistent with, ERA's presumption in favor of direct sales by the importer to distribution companies. Title II incremental pricing is a mechanism for causing low priority gas users to realize at least a portion of the true marginal cost of gas supplies, for cushioning the impact of high-cost domestic and imported gas on high priority customers, and for imposing restraint on the pipelines' bidding for current and future gas supplies whose prices are deregulated.

On the other hand, requiring supplemental supplies of low preference LNG to be sold directly to willing distribution companies is a way of determining end-use market need for these gas supplies, which is an objective different from the purpose of Title II. The distribution companies, with full knowledge of their end-use customers' requirements and the availability of cheaper, more preferable alternate sources of supply, are in the best position to demonstrate real need for LNG.

Furthermore, requiring distribution companies to contract directly for the importation does not frustrate in any way the purpose behind Title II. Section 204(c)(4) requires any local distribution company incurring first sale acquisition costs subject to the incremental pricing passthrough requirements (of which the full price of regasified LNG is one such cost) to be treated for purposes of Title II as if it were an interstate pipeline. Congress, therefore, in writing Section 204(c)(4), contemplated that in some circumstances local distribution companies might be directly importing LNG, and our requiring that import structure is not inconsistent with either the language or spirit of Title II. In fact, the direct purchase requirement would merely shift which companies are bound by the passthrough requirement.

Notwithstanding our belief that we have the authority to do so, however, we are convinced by the circumstances of this case that imposition of the direct sales requirement at this time would create considerable uncertainty and confusion for very little benefit and therefore would not be in the public interest.

We have here an ongoing project, providing a significant volume of gas in very uncertain times. The current structure of this project has been relied upon substantially by the FERC in terms of approving curtailment plans, by the pipelines and customers in terms of storage, by the State utility commissions, and certainly by the pipelines and their customers in terms of planning. Restructuring the project now through direct sales contracts would pose many practical problems that have been spelled out convincingly by the applicants.

Even PCM, a staunch advocate of the application of direct sales to this case, recognizes that time would be needed in which to work out these problems, and suggests a one year temporary approval in which direct sales would not be required. We find this both impracticable and unnecessary, if only because it would require renegotiation of the contract with Sonatrach and would, therefore, introduce an element of uncertainty into the viability of the project.

Our determination not to require a change in the structure of this ongoing project, however, should not be viewed as any modification of our presumption in favor of direct purchase arrangements for new LNG projects, including incremental supplies into existing receiving facilities.

F. Whether This Gas Should Be Incrementally Priced at the Burner-Tip

The final issue to be resolved in this case is whether approval of the proposed price increase should be conditioned on the LNG costs' being incrementally priced at the end-use level, either under Title II of the Natural Gas Policy Act (NGPA) or under ERA's independent authority under Section 3 of the Natural Gas Act. As we stated in our prehearing order, the burden of demonstrating that end-use incremental pricing is in the public interest lies with those advocating that position.

Several interveners in the case, including particularly PCM and the Public Service Commission of the State of New York (PSCNY), support the imposition of incremental pricing on the basis that it would subject imported LNG to a market test and allow a more efficient allocation of economic resources. Incremental pricing would prevent somewhat the distortion of the need for the LNG at the proposed price that rolled-in pricing permits.

The applicants and other interveners oppose the imposition of end-use incremental pricing. Their primary argument is a legal one--that ERA is precluded by Section 207(a)(1) of the NGPA from requiring it. Several distribution companies also argue that they might have difficulty in selling the LNG volumes to industrial customers because while it would be competitive in price with alternate fuels, it would also be subject to curtailment, unlike alternate fuels.

In addition, General Motors (GM) objects specifically to the type of incremental pricing mandated by Title II. Citing PCM's expert witness, Mr. Frazier, GM states that Title II incremental pricing does not produce the results of true marginal cost pricing. Rather than pricing the commodity at its full cost, it amounts merely to the subsidization of high-priority users, who are not required by Title II to purchase incremental supplies at incremental prices, by industrial low-priority users.

We conclude that, given the substantial increase in the price of this gas supply approved in this decision, the public interest requires that the gas from this project be incrementally priced. We agree with the proponents of incremental pricing that allowing the substantially increased price to be rolled-in with other pipeline supplies would mask the true cost of the LNG. It results, in effect, in a subsidization of high-cost imported fuel. Such market distortion would impact negatively on our overall energy policy, for it would send to low priority gas users a false signal as to the true cost of incremental supplies of natural gas and postpone their conversion to secure domestic supplies of alternative forms of energy such as coal.

We also conclude that compliance with the incremental pricing scheme outlined in Title II of the NGPA (and implemented by the FERC in Order No. 49 and subsequent orders that it has issued or will issue) is the most appropriate mechanism at the present time to accomplish this goal. Incrementally pricing this LNG under the Title II scheme will go a long way toward pricing this commodity at its full cost and giving proper pricing signals to potential buyers. It also provides some measure of protection for high priority gas users from the indefinite nature of the price escalation clause in this Amendment Agreement.

Moreover, the scheme can be put into effect with a minimum of administrative burden, since the three purchasing pipelines are already required to comply with the FERC's rules implementing Title II. The FERC's Order No. 49 is already operational, and the mechanism provided there can be adjusted to include the price of this LNG with a minimum of administrative burden.

Finally, use of the Title II incremental pricing scheme will not in any way affect the Amendment Agreement with Sonatrach and will not, therefore, jeopardize its immediate implementation.

We are not persuaded by the arguments that distribution companies will have difficulty in selling this gas if it is incrementally priced. As we have noted, its price under Title II will be established by the FERC at levels that should assure its competitiveness with residual oil. While gas is subject to interruption, in today's market it is to many industrial customers as secure an energy supply as fuel oil.

In deciding to require incremental pricing, we of course reject the applicants' argument that the costs of the LNG are statutorily grandfathered and made exempt from Title II incremental pricing by Section 207(a)(1) of the NGPA. The relevant portion of that section states that the provisions of Title II do not apply where "the importation of such liquefied natural gas has been authorized under Section 3 of the Natural Gas Act on or before May 1, 1978." As noted above, the applicants argue that the relevant orders authorizing this import are those issued by the FPC, which in all cases were dated before May 1, 1978.109/

As we stated above, the contract amendment at issue here drastically changes the complexion of the import from that originally approved in 1972, both by raising the base price by 500 percent as of January 1, 1980 and by adding an escalator provision that ties further increases to changes in the price of oil products, which, as shown by recent experience, are subject to substantial price escalations. The new amendment is not a logical expansion of the original, FPC-approved contract between El Paso and Sonatrach, but creates an entirely new project raising vastly different considerations as to whether it meets the test of Section 3 of the Natural Gas Act of not being inconsistent with the public interest. To be sure, the FPC authorized importation, but at the old price; to precisely the same extent we are granting here the authority to import, at the new price.

Since incremental pricing is not barred by Section 207(a)(1) of the NGPA, it is either a new project, automatically subject to incremental pricing under Section 203(a)(4), or it falls under one of the categories in Section 207(a)(2) and (3), in which case incremental pricing is not automatic under Section 203(a)(4) but can be imposed at the discretion of ERA under Section 207(c)(1). The amended project certainly is not subject to Section 207(a)(2), which concerns LNG projects for which an application for authorization was pending on May 1, 1978. However, we find that the project as authorized herein does fall within the provisions mf Section 207(a)(3), which encompasses projects where, "in connection with the granting of any authority under the Natural Gas Act to import liquefied natural gas, [the Administrator] determines that a contract binding on the importer or other substantial financial commitment of the importer has been made on or before May 1, 1978." (Emphasis added.) While a contract reflecting the amended project was not binding on the importer on May 1, 1978, it is obvious that El Paso and the applicants had made a substantial financial commitment in terms of ships and terminal facilities as of that date.

Under Section 207(c)(1) of the NGPA, therefore, and for the reasons we have stated above, we conclude that the incremental pricing provisions of Title II should apply to the project authorized today. In particular, we find that it would be inconsistent with the public interest to shield this source of high cost gas from exposure to market conditions by permitting it to be rolled-in with other pipeline supplies, while at the same time the NGPA requires high-priced domestic sources of natural gas, which should, if anything, be preferred over LNG imports, to be subject to incremental pricing. This finding is particularly appropriate since the record shows that this incremental supply of gas will be used primarily for industrial load in at least two of the three market areas served by the applicants.

Order

The DOE/ERA Orders:

(A) Pursuant to Section 3 of the Natural Gas Act and subject to the conditions that follow, the DOE/ERA approves the Joint Application of Columbia LNG Corporation, Consolidated System LNG Company, and Southern Energy Company (the Applicants) for:

(1) an order amending previous orders authorizing importation into the United States of liquefied natural gas from Algeria to reflect the changes outlined herein; and

(2) an order approving Amendment No. 3 to the Contract for Sale and Purchase of Liquefied Natural Gas, dated October 9, 1969, as outlined herein.

(B) Any tariffs or rate schedules covering the importation authorized by Paragraph (A) above shall reflect a f.o.b. price Arzew, Algeria, for the LNG calculated on the basis of no more than U.S. $1.945 per MMBtu, adjusted for boil-off pursuant to the LNG Sales Agreements between the Applicants and El Paso Algeria Corporation, for the period January 1, 1980, through June 30, 1980.

(C) Thereafter, any such tariffs or rate schedules shall reflect a f.o.b. price Arzew, Algeria, for the LNG calculated pursuant to the contract formula in Amendment 3 approved herein, including the adjustments contained therein, and adjusted for boil-off pursuant to the LNG Sales Agreements between the Applicants and El Paso Algeria Corporation.

(D) The f.o.b. price approved in paragraphs (B) and (C) above, including adjustments, as well as any transportation or other costs elsewhere approved by DOE/ERA, shall govern sales of the regasified LNG by the Applicants.

(E) The Applicants will not change the rates approved herein except pursuant to the procedures prescribed in Sections 4, 5, and 9 of the Natural

Gas Act and 18 CFR Section 154.63, with the exception of the changes in rates caused by the adjustments allowed in Paragraphs (B) and (C).

(F) Pursuant to Section 207(c)(1) of the Natural Gas Policy Act of 1978, the DOE/ERA requires that the provisions of Section 203(a)(4) of the Natural Gas Policy Act of 1978 shall apply with respect to the import authorized herein.

(G) The approvals contained in Paragraphs (A), (B), and (C) above are conditioned on the costs of the liquefied natural gas at the point of entry to the United States being subjected to the passthrough requirements of any rules issued by the Federal Energy Regulatory Commission pursuant to Title II of the Natural Gas Policy Act of 1978.

(H) Ordering paragraphs 5, 6, and 7 of Federal Power Commission Opinion No. 622-A, as amended, are further amended to incorporate the approved changes outlined herein.

(I) The provisions of this order shall supersede any provisions to the contrary contained in any of the orders of the Federal Power Commission or the DOE/ERA respecting the importation into the United States by the Applicants of liquefied natural gas from Algeria.

Issued in Washington, D.C., on December 29, 1979.

--Footnotes--

1/ Columbia LNG Corporation, et al., Opinion No. 622 (June 28, 1972), 47 FPC 1624, as modified on rehearing by Opinion No. 622-A, 48 FPC 723 (October 5, 1972); further modified by FPC Opinion No. 586 (January 21, 1977) and FPC Order issued July 27, 1977 (FPC Docket Nos. CP71-68, CP71-151, CP71-153) and ERA Order issued May 8, 1979 (ERA Docket No. 78-007-LNG).

2/ Four percent in accordance with the index relating to the price of steel mill products, and 16 percent according to changes in the index of earnings of production workers in the petroleum and coal products industry. The starting points for calculating variations upwards or downwards for the two indices were their values as published on September 15, 1971. The escalator was approved by the FPC so as to raise automatically the import ceiling price, without the need for further review. (See the "Presiding Examiner's Initial Decision upon Applications for Importation of Liquefied Natural Gas and for Certificates of Public Convenience and Necessity," May 22, 1972, FPC Docket Nos. CP71-68, et al. (hereinafter "FPC Initial Decision"), pp. 21-22 and 46.

3/ See discussion of the escalator clause in Section IV,B,2 of this opinion.

4/ EP-7, para. 1(3).

5/ Amendment, para. 1(4) (Exhibit No. EP-7).

6/ 44 FR 36094, June 20, 1979.

7/ Designated as Opinion and Order No. 7 by an Addendum issued by ERA on October 3, 1979 (hereinafter Opinion No. 7).

8/ Effective December 1, 1979, the Deputy Administrator for Policy became the Acting Administrator of ERA and assumed all of the functions and duties of the Administrator until such time as a successor is duly appointed and qualified.

9/ The September 24 Prehearing Order also granted three petitions for intervention which were filed subsequent to the issuance of Opinion No. 7. One of the petitions was filed by the Consumer Federation of America (CFA) and the Consumer Energy Council of America (CECA) on September 14, 1979, the date of the prehearing conference. On September 21, 1979, CFA and CECA filed an application for rehearing of Opinion No. 7. On October 25, 1979, ERA issued an Order dismissing this application on the grounds that CFA and CECA lacked standing, and for other reasons fully stated in the October 25 Order.

10/ The discovery conference was held in Washington, D.C., on October 9, 1979, pursuant to the schedule established in the September 24 Prehearing Order. Our statement concerning the survey is at pages 37-40 of the Transcript of the Discovery Conference, and the relevant sections of the Order Modifying Prehearing Order are at pages 5-6 of that Order.

11/ 42 FR 50726, November 29, 1977.

12/ 44 FR 56735, October 2, 1979. Delegation Order No. 0204-54 supersedes Delegation Order 0204-25 (43 FR 47769, October 17, 1978), which, as it concerns the present application, in effect gave ERA the same functions as were assigned to it by Delegation Order No. 0294-54.

13/ CFA/CECA I.B. at 6. In this opinion, initial briefs will be referred to as "I.B.," reply briefs as "R.B.," the transcript as "Tr.," prepared direct testimony as "P.D.T." and prepared rebuttal testimony as "P.R.T." Transcript volumes and pages, respectively, will be referred to, for example, as "9/35" (volume 9, page 35).

14/ Laoussine P.D.T. as adopted by Belguedj at 3; Sonatrach I.B. at 3; Belguedj Tr. 8/181-182, 9/35.

15/ 563 F.2d at 599.

16/ Id. at 600.

17/ Id.

18/ The fact that Sonatrach is bound by its Initial Agreement in our judgment is an important reason why El Paso Algeria and the applicants were entitled to substantial consideration in the form of price discounts in the Amendment Agreement when they agreed to relieve Sonatrach of its contractual obligation. See discussion of the base price, infra.

19/ Hadad, Tr. 7/80.

20/ Exs. EP 12, 13, 14.

21/ The escalator clauses in Distrigas and Trunkline, as in this case, provide that the price shall be adjusted on January 1 and July 1 of each year to reflect increases in fuel oil prices ending with the six month period ending one full month before the price adjustment. Therefore, the July 1, 1979 price adjustment was based on oil prices from December 1, 1978 through May 31, 1979. The parties here reached agreement on a base price of $1.75 on May 11, 1979, at a time when all parties were aware that fuel oil prices on the east coast of the U.S. were increasing rapidly and would continue to do so through May 31, the end of the escalation period.

22/ The calculation is set forth below in connection with the discussion of the escalator clause. At the hearing prices of $1.9305 and $1.94 were used by various witnesses. These January 1, 1980 prices used at the hearing were necessarily estimates, since the six-month period during which Platt's postings are recorded in order to determine the January 1, 1980 price did not end until November 30, 1979. See Hadad Tr. 7/77.,

23/ See Schantz P.D.T. at Schedule 1 (Ex. SNG 19).

24/ Id. at Schedule 2.

25/ Columbia I.B. at 9a, 9b, 9c.

26/ Id. at 9a.

27/ Id. at 10.

28/ Border Gas, Inc., Opinion No. 12, ERA Docket No. 79-31-NG (December 29, 1979).

29/ Southern I.B. at 9.

30/ El Paso I.B. at 13.

31/ PSCNY I.B. at 4.

32/ CFA/CECA I.B. at 7.

33/ Id. at 2 (emphasis in original).

34/ Opinion No. 7 at 11.

35/ Schantz Tr. 6/184-85.

36/ PCM calls this the "inlet" price, referring to the inlet of the pipeline leaving the LNG terminal. For the sake of consistency, we will call it the "tailgate" price.

37/ PCM I.B. at 18.

38/ Id. at Appendix, p. 12c.

39/ In all markets the regasified LNG compares favorably with No. 2 oil, which ranges in price from \$4.92 to \$5.03 per MMBtu. We also note that this gas will be the cheapest natural gas currently available for import into the U.S. Canadian imports are currently \$3.45 per MMBtu at the border, and Mexican imports are \$3.625. The January 1, 1980 price will be \$0.73 per MMBtu cheaper than the Algerian LNG being imported by Distrigas.

40/ For example, Columbia points out that even where high sulfur fuel oil is permitted by environmental regulations, natural gas enjoys a premium of 2 to 6 cents per MMBtu because of its clean-burning characteristics. Columbia I.B, at 8 n.3.

41/ Using values for F and F1 from the Further Prepared Direct Testimony of B. Hadad at 6:

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$1.75 (0.50) $19.654 + 0.50 $18.609 - $0.60 = $1.15/MMBtu
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                $19.654       $18.609
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42/ Using estimated values for F, F', F1 and F1 (based on Platt's through October 3, 1979 and assuming no further price increases through November 30, 1979), the price would be \$1.9305:

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$1.75 (0.50) $29.067 + 0.50 $24.168 - $0.50 = $1.9305/MMBtu
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$19.654 $18.609

This is the figure used in the prepared testimony and relied on at the hearing. See Hadad, Further P.D.T. at 6. This figure was later corrected to $1.94 based on Platt's reports through October 22. Hadad Tr. 77/77. Since the hearing we have calculated values for F and F' based on actual prices in Platt's between June 1, 1979 and November 30, 1979 and find that F = $29.081 and F' = $24.454. Substitution of those values in the above formula results in an actual January 1, 1980 price of $1.9448/MMBtu.

43/ See Opinion No. 2, Pacific Indonesia LNG Co., et al., ERA Docket 77 -001-LNG (September 29, 1978).

44/ See Opinion No. 1 at 21, ERA Docket 57-001-LNG (December 29, 1977); Opinion No. 3 at 67, ERA Docket 77-010-LNG (December 18, 1978); Opinion No. 4 at 66, ERA Docket 77-006-LNG (December 21, 1978).

45/ See Order dated December 31, 1977 in Distrigas Corp., ERA Docket 77-011-LNG.

46/ Trunkline LNG Co., Opinion No. 796, Docket Nos. CP74-138 et al. (April 29, 1977).

47/ Opinion No. 12, ERA Docket 79-31-NG, December 29, 1979.

48/ See Chalfont Tr. 8/148-149.

49/ See Chalfont P.D.T. at 3.

50/ An advantage of Platt's over other publications is the broadness of its survey base. It reports both high and low prices and surveys nine marketers who handle a majority of the No. 2 and No. 4 fuel oil volumes at New York Harbor. See Chalfont Tr. 8/147 and 161. Cf. Hadad Tr. 7/57-58.

51/ Belguedj Tr. 8/125-126.

52/ Hadad Tr. 7/165. See Ex. EP-10.

53/ In fairness, we should also observe that if duel oil prices remain relatively stable, the high prices reported in Platt's will generally parallel average prices, and that in a market characterized by declining prices (which until the past year have not been uncommon on a seasonal basis) the use of the high price only will work to the benefit of the U.S. consumer.

54/ See Hadad Tr. 7/92-93.

55/ El Paso Algeria I.B. at 21.

56/ Id. The record and subsequent events indicate that this estimate is quite conservative. At the time of the hearing, Saudi Arabian light crude oil was sold at contract at $18 per barrel, a price which at the time was well below even the contract prices of other countries for comparable crude oil, not to mention spot market prices that were running as high as $40 per barrel and represented the prevailing price for incremental supplies of crude oil. Since then, Saudi Arabia and other countries have made major increases in their contract prices. The current Saudi price of $24 per barrel is still the lowest prevailing on the world market.

57/ CFA/CECA I.B. at 7.

58/ Id.

59/ See Department of Energy Monthly Energy Review, Part 3, Petroleum Products.

60/ Memorandum for the President from W. Michael Blumenthal, Subject: Report of Section 232 Investigation on Oil Imports.

61/ Quinn Tr. at 5/189.

62/ This is the largest single source of supply attached to the Southern system and is approximately five times the next largest single source of supply. At the time Southern decided to contract for the LNG, it represented 27% mf total reserves.

63/ Matthews P.D.T. at 2-3.

64/ Quinn T. at 5/186-187.

65/ Matthews P.D.T. at 3.

66/ Id.

67/ Quinn Tr. at 5/181.

68/ Matthews P.D.T. at 3-4.

69/ Id.

70/ Aderholt P.D.T. at 46.

71/ CFA/CECA I.B. at 5, citing Matthews Tr. 6/96-97.

72/ Algerian LNG represents approximately 19 percent of total committed gas reserves of Columbia Gas Transmission Corporation, the purchaser of regasified LNG from Columbia LNE.

73/ Howard P.D,T. at 2.

74/ Howard Tr.70, 107.

75/ Id. at 4/58, 66.

76/ Id. at 6/106.

77/ Howard P.D.T. at 10.

78/ Howard Tr. 4/101.

79/ Columbia I.B. at 15.

80/ PCM I.B. at 11-14.

81/ Id. at App., p. 1.

82/ Consolidated's total controlled reserves are approximately 14 trillion cubic feet. Hibbs Tr. 4/191.

83/ Off system sales are expected to total 37 Bcf in 1979 and 69.7 Bcf in 1980. Hibbs Tr. 5/9-11.

84/ Hibbs Tr. 5/15. As stated by CFA/CECA, "Consolidated clearly has no need for the LNG; indeed, it has had to cut back on lower-priced domestic gas in order to live up to the take-or-pay requirements of its LNG contract." CFA/CECA I.B, at 5.

85/ Hibbs Tr. 5/37-38.

86/ Id. 5/41-43.

87/ Id. 5/59.

88/ Id. 4/187-191. The total Appalachian reserves are estimated to be 2.2 trillion cubic feet.

89/ Id. at 4/196.

90/ I.B. at 4.

91/ Id. at 5/19.

92/ Id. at 4/200.

93/ Recent legislation, such as the National Energy Conservation Policy Act, P.L. 95-1751, and the Powerplant and Industrial Fuel Use Act of 1978, P.L. 95-620, will also result in elimination of certain load requirements and increased conservation by customers, which will impact on the applicants' projections.

94/ Hibbs Tr. 5/13.

95/ Id. at 5/15-16, 19.

96/ See also Opinion No. 12, Border Gas, Inc., ERA Docket 79-31-NG (December 29, 1979).

97/ Opinion No. 3 at 43 (footnotes omitted).

98/ Order at 5-6. See also the transcript of the Discovery Conference (October 9, 1979) at 16-18; 37-40.

99/ See, e.g., Columbia I.B. at 25.

100/ This issue is covered above in Section D. It is worth repeating here, however, that there are significant differences in the gas supply situation of Columbia and Consolidated on the one hand and Southern--where the LNG comprises a much larger percentage of system supply and of total reserves--on the other.

101/ See, e.g., Consolidated I.B. at 17; Columbia I.B. at 31.

102/ Southern I.B. at 20-21.

103/ Washington I.B. at 2.

104/ The one witness sponsored by those advocating direct sales, Mr. Frazier, or PCM, did lot unequivocally support the position later taken by PCM on brief with regard to direct sales. See Frazier Tr. 3/112-113

105/ WVPSC I.B., passim. These and other grounds for opposition by WVPSC are addressed above in connection with the need for this gas supply.

106/ Id. at 15.

107/ See, e.g., PCM R.B. at 19.

108/ PCM I.B. at 41.

109/ While the applicants argue that the only issue we have before us is "price," and not "import authorization," which they claim was decided by the FPC, they do not explain the inconsistency in their apparent concession in their briefs that we do have the authority to consider, for example, the need for this gas, even though that is also an issue the FPC previously considered.